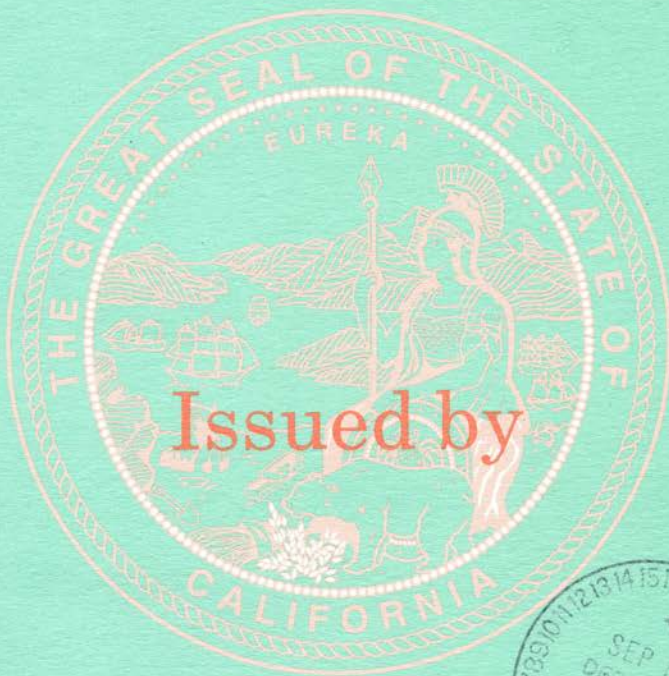


Nursing Practice Act

Rules and Regulations



Issued by

Board of

Registered Nursing

1997





Pete Wilson
Governor

Marjorie M. Berte
Director

NURSING PRACTICE ACT

with
Rules and Regulations

Issued by

BOARD OF REGISTERED NURSING
1997



Statutes Include Amendments Through September 29, 1996
Regulations Include Amendments Through November 1, 1996

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NURSING PRACTICE ACT

Signed by the Governor July 17, 1939

Became a law September 19, 1939

Amended 1941, 1943, 1945, 1947, 1949, 1951, 1953, 1955, 1957, 1959, 1961, 1963, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997

Extracted From

BUSINESS AND PROFESSIONS CODE OF CALIFORNIA

DIVISION 2. HEALING ARTS

Chapter 6. Nursing

Article 1. Administration

2700. Construction and Citation of Chapter

This chapter of the Business and Professions Code constitutes the chapter on professional nursing and shall be construed as revisory and amendatory of the laws heretofore enacted. It may be cited as the Nursing Practice Act.

(Added by Stats. 1939, c. 807, p. 2346, § 2.)

2701. Board of Registered Nursing in General

There is in the Department of Consumer Affairs the Board of Registered Nursing consisting of nine members.

Within the meaning of this chapter, board, or the board, refers to the Board of Registered Nursing. Any reference in state law to the Board of Nurse Examiners of the State of California or California Board of Nursing Education and Nurse Registration shall be construed to refer to the Board of Registered Nursing.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

(Amended by Stats. 1977, c. 141; Stats. 1994, c. 908 (SB 2036), § 15; Stats. 1994, c. 1275 (SB 2101), § 10; Stats. 1995, c. 599 (AB 778), § 2.)

2702. Qualifications of Members

Each member of the board shall be a citizen of the United States and a resident of the State of California. Three members shall represent the public at large, and shall not be licensed under any board under this division or any board referred to in Section 1000 or 3600 and shall have no pecuniary interests in the provision of health care services. Three members shall be licensed registered nurses under the provisions of this chapter, each of whom shall be active in the practice of his profession engaged primarily in direct patient care with at least five continuous years of experience, and who shall not be engaged as an educator or administrator of a nursing education program under the provisions of this chapter. One member shall be a

licensed registered nurse under the provisions of this chapter who shall be active as an educator or administrator in an approved program to train registered nurses. One member shall be a licensed registered nurse who is an administrator of a nursing service with at least five continuous years of experience. One member shall be a licensed physician active in the practice of his profession with at least five years of continuous experience.

(Amended by Stats. 1976, c. 1188, p. 5339, § 12.)

2703. Appointment and Tenure of Members; Vacancies

All appointments shall be for a term of four years and vacancies shall be filled for the unexpired term. No person shall serve more than two consecutive terms.

The Governor shall appoint one of the public members and the licensed members of the board qualified as provided in Section 2702. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

(Amended by Stats. 1982, c. 676, p. 2750, § 10.)

2706. Removal of Member

The Governor has the power to remove any member of the board from office for neglect of any duty required by law, or for incompetency, or unprofessional or dishonorable conduct.

(Added by Stats. 1939, c. 807, p. 2347, § 2.)

2707. Officers of Board

The board shall annually elect from its members a president, vice president, and any other officers as it may deem necessary. The officers of the board shall hold their respective positions during its pleasure.

(Added by Stats. 1939, c. 807, p. 2347, § 2. Amended by Stats. 1994, c. 1275 (SB 2101), § 11.)

2708. Executive Officer of Board

The board shall appoint an executive officer who shall perform the duties delegated by the board and who shall be responsible to it for the accomplishment of those duties.

The executive officer shall be a nurse currently licensed under this chapter and shall possess other qualifications as determined by the board.

The executive officer shall not be a member of the board.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 1983, c. 742, § 1; Stats. 1994, c. 908 (SB 2036), § 16.)

2709. Regular Meetings

The board for the purpose of transacting its business shall meet at least once every three months, at times and places it designates by resolution.

(Added by Stats. 1939, c. 807, p. 2347, § 2.)

2709.5. Manner of Payment of Fees

The board shall accept in payment of any fee required by this chapter cash or any customary or generally accepted medium of exchange, including check, cashier's check, certified check or postal money order. For the purposes of this section, customary or generally accepted medium of exchange does not include postage stamps.

(Added by Stats. 1957, c. 1468, p. 2791, § 1.)

2710. Special Meetings on Notice

Special meetings may be held at such times as the board may elect, or on the call of the president of the board, or of not less than three members thereof.

A written notice of the time, place and object of any special meeting shall be mailed by the executive officer to all members of the board who are not parties to the call, at least fifteen days before the day of the meeting.

(Amended by Stats. 1983, c. 742, § 2.)

2710.5. Advisory Committees

The board, with permission of the Director of the Department of Consumer Affairs, may form advisory committees to advise the board on the implementation of this chapter. Members of such advisory committees shall be entitled to a per diem and expenses as provided in Section 103.

(Added by Stats. 1974, c. 632, p. 1483, § 5.)

2712. Quorum

Five members of the board constitute a quorum for the transaction of business at any meeting.

(Amended by Stats. 1985, c. 1055, § 1.)

2713. Record of Proceedings

The board shall keep a record of all its proceedings, including a register of all applicants for licenses under this chapter and the action of the board upon each application.

(Amended by Stats. 1983, c. 742, § 4.)

2714. Offices; Venue of Legal Proceedings

The office of the board shall be in the city of Sacramento. Suboffices may be established in Los Angeles and San Francisco and such records as may be necessary may be transferred temporarily to them. Legal proceedings against the board may be instituted in any county in which any of the three cities above mentioned is located.

(Added by Stats. 1939, c. 807, p. 2348, § 2.)

2715. Prosecutions by Board; Employees; Seal; Rules and Regulations

The board shall prosecute all persons guilty of violating the provisions of this chapter.

Except as provided by Section 159.5, the board, in accordance with the provisions of the Civil Service Law, may employ such personnel as it deems necessary to carry into effect the provisions of this chapter.

The board shall have and use a seal bearing the name "Board of Registered Nursing." The board may adopt, amend, or repeal, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of this chapter.

This section will become inoperative July 1, 1998, and is repealed by its own terms operative Jan. 1, 1999.

(Amended by Stats. 1974, c. 632, p. 1483, § 6.)

2716. Compensation of Members; Per Diem; Expenses

Each member of the board shall receive a per diem and expenses as provided in Section 103.

(Added by Stats. 1959, c. 1645, p. 4022, § 10.)

2718. Clinical Nurse Specialists; Study

(a) The board shall conduct a study regarding the recognition and definition of clinical nurse specialists. The board shall report the results of the study to the Legislature on or before January 1, 1995. The study shall address all of the following:

(1) The appropriate educational level for clinical nurse specialists, including clinical and didactic education and experience.

(2) The alternative means for measuring and ensuring competency of clinical nurse specialists.

(3) Means for protecting the public from confusion regarding use and misuse of the title "clinical nurse specialist".

(4) Barriers to practice facing clinical nurse specialists.

(5) The relationship of clinical nurse specialists to other relevant health professionals, including, but not limited to, physicians and surgeons, and other registered nurses.

(b) In conducting the study, the board shall consult with clinical nurse specialists, the statewide professional association representing registered nurses, physicians and surgeons who have experience working with clinical nurse specialists, employers of clinical nurse specialists, and other interested parties as determined by the board.

(Added by Stats. 1993, c. 77 (AB 518), § 2.)

Article 2. Scope of Regulation

2725. Legislative Declaration; Practice of Nursing; Functions

(a) In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures that have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems

that provide for collaboration between physicians and registered nurses. These organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

(b) The practice of nursing within the meaning of this chapter means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(3) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

(c) "Standardized procedures," as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated the guidelines shall be administered by the Board of Registered Nursing.

(d) Nothing in this section shall be construed to require approval of standardized procedures by the Division of Licensing of the Medical Board of California, or by the Board of Registered Nursing.

(Amended by Stats. 1989, c. 886, § 52; Stats. 1995, c. 279 (AB 1471), § 15; Stats. 1996, c. 124 (AB 3470), § 2.)

2725.1. Dispensing Drugs or Devices; Registered Nurses; Limitations

Notwithstanding any other provision of law, a registered nurse may dispense drugs or devices upon an order by a licensed physician and surgeon when the nurse is functioning within a licensed clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of, or within a clinic as defined in subdivision (b) or (c) of Section 1206, of the Health and Safety Code.

No clinic shall employ a registered nurse to perform dispensing duties exclusively. No registered nurse shall dispense drugs in a pharmacy, keep a pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 3.5 (commencing with Section 4063) of Chapter 9.

(Added by Stats. 1986, c. 493, § 1.)

2726. Authority Not Conferred

Except as otherwise provided herein, this chapter confers no authority to practice medicine or surgery.

(Amended by Stats. 1974, c. 355, p. 687, § 2.)

2727. Exceptions in General

This chapter does not prohibit:

- (a) Gratuitous nursing of the sick by friends or members of the family.
- (b) Incidental care of the sick by domestic servants or by persons primarily employed as housekeepers as long as they do not practice nursing within the meaning of this chapter.
- (c) Domestic administration of family remedies by any person.
- (d) Nursing services in case of an emergency. "Emergency," as used in this subdivision includes an epidemic or public disaster.
- (e) The performance by any person of such duties as required in the physical care of a patient and/or carrying out medical orders prescribed by a licensed physician; provided, such person shall not in any way assume to practice as a professional, registered, graduate or trained nurse.

(Amended by Stats. 1943, c. 573, p. 2142, § 1.)

2727.5. Emergency Care; Immunity from Liability; Gross Negligence

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and

the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care.

This section shall not grant immunity from civil damages when the person is grossly negligent.

(Amended by Stats. 1984, c. 1391, § 2.)

2728. Attendants and Technicians in Institutions; Supervision

If adequate medical and nursing supervision by a professional nurse or nurses is provided, nursing service may be given by attendants, psychiatric technicians, or psychiatric technician interim permittees in institutions under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services or subject to visitation by the State Department of Health Services or the Department of Corrections. Services so given by a psychiatric technician shall be limited to services which he or she is authorized to perform by his or her license as a psychiatric technician. Services so given by a psychiatric technician interim permittee shall be limited to skills included in his or her basic course of study and performed under the supervision of a licensed psychiatric technician or registered nurse.

The Directors of Mental Health, Developmental Services, and Health Services shall determine what shall constitute adequate medical and nursing supervision in any institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services or subject to visitation by the State Department of Health Services.

Notwithstanding any other provision of law, institutions under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services may utilize graduates of accredited psychiatric technician training programs who are not licensed psychiatric technicians or psychiatric technician interim permittees to perform skills included in their basic course of study when supervised by a licensed psychiatric technician or registered nurse, for a period not to exceed nine months.

(Amended by Stats. 1987, c. 464, § 1, eff. Sept. 9, 1987.)

2728.5. Psychiatric Technicians or Interim Permittees

Except for those provisions of law relating to directors of nursing services, nothing in this chapter or any other provision of law shall prevent the utilization of a licensed psychiatric technician or psychiatric technician interim permittee in performing services used in the care, treatment, and rehabilitation of mentally ill, emotionally disturbed, or developmentally disabled persons within the scope of practice for which he or she is licensed or authorized in facilities under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services or licensed by the State Department of Health Services, that he or she is licensed to perform as a psychiatric technician, or authorized to perform as a psychiatric technician interim permittee including any nursing services under Section 2728, in facilities under the jurisdiction of the State Depart-

ment of Mental Health or the State Department of Developmental Services or subject to visitation by the State Department of Health Services.

(Amended by Stats. 1987, c. 464, § 2, eff. Sept. 9, 1987.)

2729. Students

Nursing services may be rendered by a student when these services are incidental to the course of study of one of the following:

(a) A student enrolled in a board-approved prelicensure program or school of nursing.

(b) A nurse licensed in another state or country taking a board-approved continuing education course or a postlicensure course.

(Amended by Stats. 1978, c. 212, p. 455, § 1, eff. June 6, 1978.)

2730. Out-of-State Nurse Attending Temporary Resident

If he does not represent or hold himself out as a professional nurse licensed to practice in this State and if he has an engagement, made in another State or country, requiring him to accompany and care for a patient temporarily residing in this State during the period of such engagement, a nurse legally qualified by another State or country may give nursing care to such patient in this State.

(Added by Stats. 1939, c. 807, p. 2350, § 2.)

2731. Nursing in Connection with Practice of Religious Tenets

This chapter does not prohibit nursing or the care of the sick, with or without compensation or personal profit, when done by the adherents of and in connection with the practice of the religious tenets of any well recognized church or denomination, so long as they do not otherwise engage in the practice of nursing.

(Added by Stats. 1939, c. 807, p. 2350, § 2.)

2732. Practice without License; Terms "Registered Nurse" and "R.N."

No person shall engage in the practice of nursing, as defined in Section 2725, without holding a license which is in an active status issued under this chapter except as otherwise provided in this act.

Every licensee may be known as a registered nurse and may place the letter "R. N." after his name.

(Amended by Stats. 1976, c. 1053, p. 4679, § 1, eff. Sept. 20, 1976.)

2732.05. Duty of Employer to Ascertain Nurses' Current Authority to Practice

Every employer of a registered nurse, and every person acting as an agent for such a nurse in obtaining employment, shall ascertain that such nurse is currently authorized to practice as a registered professional nurse within the provisions of this chapter. As used in this section, the term "agent" includes, but is not limited to, a nurses registry.

Examination by an employer or agent of evidence satisfactory to the board showing the nurse's current authority to practice under this chapter, prior to employment, shall constitute a determination of authority to so practice.

Nothing in this section shall apply to a patient, or other person acting for a specific patient, who engages the services of a registered nurse to provide nursing care to a single patient.

(Amended by Stats. 1970, c. 524, p. 1021, § 1.)

2732.1. Application for License; Interim Permit; Issuance of License without Examination; Fee

(a) An applicant for license by examination shall submit a written application in the form prescribed by the board.

Upon approval of the application, the board may issue an interim permit authorizing the applicant to practice nursing pending the results of the first licensing examination following completion of his or her nursing course or for a maximum period of six months, whichever occurs first.

If the applicant passes the examination, the interim permit shall remain in effect until a regular renewable license is issued by the board. If the applicant fails the examination, the interim permit shall terminate upon notice thereof by first-class mail.

(b) The board upon written application may issue a license without examination to any applicant who is licensed or registered as a nurse in a state, district or territory of the United States or Canada having, in the opinion of the board, requirements for licensing or registration equal to or higher than those in California at the time the application is filed with the Board of Registered Nursing, if he or she has passed an examination for the license or registration that is, in the board's opinion, comparable to the board's examination, and if he or she meets all the other requirements set forth in Section 2736.

(c) Each application shall be accompanied by the fee prescribed by this chapter for the filing of an application for a regular renewable license.

The interim permit shall terminate upon notice thereof by first-class mail, if it is issued by mistake or if the application for permanent licensure is denied.

(Amended by Stats. 1987, c. 850, § 10; Stats. 1992, c. 1289 (AB 2743), § 20; Stats. 1994, c. 26 (AB 1807), § 57.5, eff. March 30, 1994.)

2733. Temporary License

(a) Upon approval of an application filed pursuant to subdivision (b) of Section 2732.1, and upon the payment of the fee prescribed by subdivision (k) of Section 2815, the board may issue a temporary license to practice professional nursing, and a temporary certificate to practice as a certified nurse midwife, certified nurse practitioner, certified public health nurse, or certified nurse anesthetist for a period of six months from the date of issuance.

A temporary license or temporary certificate shall terminate upon notice thereof by certified mail, return receipt requested, if it is issued by mistake or if the application for permanent licensure is denied.

(b) Upon written application, the board may reissue a temporary license or temporary certificate to any person who has applied for a regular renewable license pursuant to subdivision (b) of Section 2732.1 and who, in

the judgment of the board has been excusably delayed in completing his or her application for or the minimum requirements for a regular renewable license, but the board may not reissue a temporary license or temporary certificate more than twice to any one person.

(Amended by Stats. 1987, c. 850, § 11; Stats. 1992, c. 1135 (SB 2044), § 2.3; Stats. 1994, c. 26 (AB 1807), § 58, eff. March 30, 1994.)

2734. Inactive Status Licenses

Upon application in writing to the board and payment of the biennial renewal fee, a licensee may have his license placed in an inactive status for an indefinite period of time. A licensee whose license is in an inactive status may not practice nursing. However, such a licensee does not have to comply with the continuing education standards of Section 2811.5.

(Added by Stats. 1976, c. 1053, p. 4679, § 2, eff. Sept. 20, 1976.)

2736. Qualifications in General

(a) An applicant for licensure as a registered nurse shall comply with each of the following:

(1) Have completed such general preliminary education requirements as shall be determined by the board.

(2) Have successfully completed the courses of instruction prescribed by the board for licensure, in a program in this state accredited by the board for training registered nurses, or have successfully completed courses of instruction in a school of nursing outside of this state which, in the opinion of the board at the time the application is filed with the Board of Registered Nursing, are equivalent to the minimum requirements of the board for licensure established for an accredited program in this state.

(3) Not be subject to denial of licensure under Section 480.

(b) An applicant who has received his or her training from a school of nursing in a country outside the United States and who has complied with the provisions of subdivision (a), or has completed training equivalent to that required by subdivision (a), shall qualify for licensure by successfully passing the examination prescribed by the board.

(Amended by Stats. 1978, c. 1161; Stats. 1992, c. 1289 (AB 2743), § 21.)

2736.1. Alcoholism and Other Chemical Substance Dependency; Spousal or Partner Abuse; Courses of Instruction

(a) The course of instruction for an applicant who matriculates on or after September 1, 1985, shall include training in the detection and treatment of alcohol and chemical substance dependency.

(b) The course of instruction for an applicant who matriculates on or after January 1, 1995, shall include training in the detection and treatment of client abuse, including, but not limited to, spousal or partner abuse. The requirement for coursework in spousal or partner abuse detection and treatment shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(Added by Stats. 1984, c. 1149, § 4. Amended by Stats. 1993, c. 1234 (AB 890), § 5.)

2736.5. Equivalence of Armed Services Duty and Instruction; Evaluation; Records; Report to Legislature; Notice to Qualified Persons

(a) Any person who has served on active duty in the medical corps of any of the armed forces of the United States and who has successfully completed the course of instruction required to qualify him for rating as a medical service technician-independent duty, or other equivalent rating in his particular branch of the armed forces, and whose service in the armed forces has been under honorable conditions, may submit the record of such training to the board for evaluation.

(b) If such person meets the qualifications of paragraphs (1) and (3) of subdivision (a) of Section 2736, and if the board determines that his education and experience would give reasonable assurance of competence to practice as a registered nurse in this state, he shall be granted a license upon passing the standard examination for such licensure.

(c) The board shall, by regulation, establish criteria for evaluating the education and experience of applicants under this section.

(d) The board shall maintain records of the following categories of applicants under this section:

(1) Applicants who are rejected for examination, and the areas of such applicants' preparation which are the causes of rejection.

(2) Applicants who are qualified by their military education and experience alone to take the examination, and the results of their examinations.

(3) Applicants who are qualified to take the examination by their military education and experience plus supplementary education, and the results of their examinations.

(e) The board shall attempt to contact by mail or other means individuals meeting the requirements of subdivision (a) who have been or will be discharged or separated from the armed forces of the United States, in order to inform them of the application procedure provided by this section. The board may enter into an agreement with the federal government in order to secure the names and addresses of such individuals.

(Amended by Stats. 1979, c. 373, p. 1258, § 12.)

2736.6. Additional Preparation Required for Vocational Nurse to Take Examination for Licensure as Registered Nurse

The board shall determine by regulation the additional preparation in nursing, in a school approved by the board, which is required for a vocational nurse, licensed under Chapter 6.5 (commencing with Section 2840) of this division, to be eligible to take the examination for licensure under this chapter as a registered nurse. The board shall not require more than 30 units in nursing and related science subjects to satisfy such preparation.

(Added by Stats. 1969, c. 1541, p. 3135, § 2.)

2737. Payment of Application Fee

An applicant for a license authorizing him to practice nursing in this State under this chapter, upon the filing of his application shall pay the fee required by this chapter.

(Added by Stats. 1939, c. 807, p. 2351, § 2.)

2738. Times and Places of Examinations

The board shall hold not less than two examinations each year at such times and places as the board may determine.

(Amended by Stats. 1953, c. 1174, p. 2672, § 10.)

2740. Conduct of Examination

Examinations shall be written, but in the discretion of the board may be supplemented by an oral or practical examination in such subjects as the board determines. All examinations shall be conducted by such persons and in such manner and under such rules and regulations as the board may prescribe.

The board shall finally pass or reject all applicants. Its actions shall be final and conclusive and not subject to review by any court or other authority.

(Added by Stats. 1939, c. 807, p. 2351, § 2.)

2741. Re-examination

Notwithstanding Section 135, an applicant who fails to pass the examination may be reexamined within that period of time as the board, by regulation, deems appropriate, but not more frequently than once every three months. An application for reexamination shall be accompanied by the fees prescribed by this chapter.

(Amended by Stats. 1987, c. 850, § 12; Stats. 1994, c. 26 (AB 1807), § 60, eff. March 30, 1994.)

2742. Issuance and Form of License

The board shall issue a license to each applicant who passes the examination and meets all other licensing requirements. The form of the license shall be determined in accordance with Section 164.

(Amended by Stats. 1987, c. 850, § 13)

Article 2.5. Nurse-Midwives

2746. Issuance of Certificate to Practice

The board shall issue a certificate to practice nurse-midwifery to any person who qualifies under this article and is licensed pursuant to the provisions of this chapter.

(Added by Stats. 1974, c. 1407, p. 3081, § 1.)

2746.1. Compliance

Every applicant for a certificate to practice nurse-midwifery shall comply with all the provisions of this article in addition to the provisions of this chapter.

(Added by Stats. 1974, c. 1407, p. 3081, § 1.)

2746.2. Educational Standards

Each applicant shall show by evidence satisfactory to the board that he has met the educational standards established by the board or has at least the equivalent thereof. The board is authorized to appoint a committee of qualified physicians and nurses, including, but not limited to, obstetricians

and nurse-midwives, to develop the necessary standards relating to educational requirements, ratios of nurse-midwives to supervising physicians, and associated matters.

(Added by Stats. 1974, c. 1407, p. 3081, § 1.)

2746.3. Renewal of Midwife's Certificate

Midwife's certificates issued by the Medical Board of California prior to the effective date of this article shall be renewable only by such board.

(Amended by Stats. 1989, c. 886, § 53.)

2746.4. Continued Practice by Holder of Midwife's Certificate

Nothing in this article shall be construed to prevent the practice of midwifery by a person possessing a midwife's certificate issued by the Medical Board of California on the effective date of this article.

(Amended by Stats. 1989, c. 886, § 54.)

2746.5. Practice of Nurse-Midwifery

The certificate to practice nurse-midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn.

As used in this chapter, the practice of nurse-midwifery constitutes the furthering or undertaking by any certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician immediately. The practice of nurse-midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.

As used in this article, "supervision" shall not be construed to require the physical presence of the supervising physician.

A nurse-midwife is not authorized to practice medicine and surgery by the provisions of this chapter.

(Added by Stats. 1974, c. 1407, p. 3081, § 1.)

2746.51. Furnishing Drugs and Devices

Neither this chapter nor any other provision of law shall be construed to prohibit a certified nurse-midwife from furnishing drugs or devices when all of the following apply:

(a) The drugs or devices are furnished incidentally to the provision of family planning services, as defined in Section 14503 of the Welfare and Institutions Code, or are furnished incidental to the provision of routine health care or perinatal care, as defined in subdivision (d) of Section 284 of the Health and Safety Code, rendered to essentially healthy persons within a facility specified in subdivision (a), except in the case of sole practitioners, and subdivision (b), (c), (d), (i), or (j) of Section 1206 of, a clinic as specified in Section 1204 of, a general acute care hospital as defined in subdivision (a)

of Section 1250 of, or a special hospital specified as a maternity hospital in subdivision (f) of Section 1250 of, the Health and Safety Code.

(b) The certified nurse-midwife is functioning pursuant to a standardized procedure, as defined by current law in Section 2725. The standardized procedure shall be developed and approved by the supervising physician and surgeon, the certified nurse-midwife, and the facility administrator or his or her designee.

(c) The standardized procedure covering the furnishing of drugs or devices shall specify which certified nurse-midwife may furnish drugs or devices, which drugs or devices may be furnished, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the certified nurse-midwife's competence, including peer review, and review of the provisions of the standardized procedure.

(d) The furnishing of drugs or devices by a certified nurse-midwife occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the certified nurse-midwife.

(e) For purposes of this section, no physician and surgeon shall supervise more than four certified nurse-midwives at one time.

(f) Drugs or devices furnished by a certified nurse-midwife shall not include controlled substances under the California Uniform Controlled Substances Act, (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the certified nurse-midwife and physician and surgeon and specified in the standardized procedure.

(g) The board has certified in accordance with subdivision (h) that the certified nurse-midwife has satisfactorily completed (1) at least six month's physician and surgeon supervised experience in the furnishing of drugs or devices and (2) a course in pharmacology covering the drugs or devices to be furnished under this section. The board shall establish the requirements for satisfactory completion of this subdivision.

(h) The furnishing of drugs or devices by certified nurse-midwives is conditional on the issuance by the board of a number to the applicant who has successfully completed the requirements of subdivision (g). The number shall be included on all transmittals of orders for drugs or devices by the certified nurse-midwife. The board shall make the list available to the California State Board of Pharmacy. The board shall charge the applicant fees for application, renewal, and penalty for failure to timely renew that are equal to the fees charged to nurse practitioners pursuant to Section 2836.3.

(i) Furnishing of drugs or devices by a certified nurse-midwife means the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure.

(Added by Stats. 1991, c. 870 (AB 1350), § 2.)

2746.52. Episiotomies; Repair of Lacerations of the Perineum

Notwithstanding Section 2746.5, the certificate to practice nurse-midwifery authorizes the holder to perform and repair episiotomies, and to repair first-degree and second-degree lacerations of the perineum, in a licensed acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, and a licensed alternate birth center, as defined in paragraph (4) of subdivision (b) of Section 1204 of the Health and Safety Code, but only if all of the following conditions are met:

(a) The supervising physician and surgeon and any backup physician and surgeon is credentialed to perform obstetrical care in the facility.

(b) The episiotomies are performed pursuant to protocols developed and approved by all of the following:

(1) The supervising physician and surgeon.

(2) The certified nurse-midwife.

(3) The director of the obstetrics department of the director of the family practice department, or both, if a physician and surgeon in obstetrics department or the family practice department is a supervising physician and surgeon, or an equivalent person if there is no specifically identified obstetrics department or family practice department.

(4) The interdisciplinary practices committee, if applicable.

(5) The facility administrator is his or her designee.

(c) The protocols, and the procedures which shall be developed pursuant to the protocols, shall relate to the performance and repair of episiotomies and the repair of first-degree and second-degree lacerations of the perineum, and shall do all of the following:

(1) Ensure that all complications are referred to a physician and surgeon immediately.

(2) Ensure immediate care of patients who are in need of care beyond the scope of practice of the certified nurse-midwife, or emergency care for times when the supervising physician and surgeon is not on the premises.

(3) Establish the number of certified nurse-midwives that a supervising physician and surgeon may supervise.

(Added to Stats. 1996, c. 158 (SB 1738), § 1, eff. July 12, 1996.)

2746.7. Application Fee

An applicant for certification pursuant to this article shall submit a written application in the form prescribed by the board, accompanied by the fee prescribed by Section 2815.5.

(Added by Stats. 1974, c. 1407, p. 3082, § 1.)

2746.8. Renewal; Expiration and Reinstatement

Each certificate issued pursuant to this article shall be renewable biennially, and each person holding a certificate under this article shall apply for a renewal of his certificate and pay the biennial renewal fee required by Section 2815.5 every two years on or before the last day of the month following the month in which his birthday occurs, beginning with the second birthday following the date on which the certificate was issued, whereupon the board shall renew the certificate.

Each such certificate not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by Section 2815.5 and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired certificate which has lapsed solely by reason of nonpayment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of nurse-midwifery.

(Added by Stats. 1974, c. 1407, p. 3082, § 1.)

Article 3. Disciplinary Proceedings

2750. Powers and Proceedings

Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(Amended by Stats. 1984, c. 144, § 10; Stats. 1994, c. 1275 (SB 2101), § 13.)

2759. Mode of Discipline

The board shall discipline the holder of any license, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:

- (a) Suspending judgment.
- (b) Placing him upon probation.
- (c) Suspending his right to practice nursing for a period not exceeding one year.
- (d) Revoking his license.
- (e) Taking such other action in relation to disciplining him as the board in its discretion may deem proper.

(Added by Stats. 1939, c. 807, p. 2354, § 2.)

2760. Practice During Suspension; Reinstatement or Revocation

If the holder of a license is suspended, he or she shall not be entitled to practice nursing during the term of suspension.

Upon the expiration of the term of suspension, he or she shall be reinstated by the board and shall be entitled to resume his or her practice of nursing unless it is established to the satisfaction of the board that he or she has practiced nursing in this state during the term of suspension. In this event, the board shall revoke his or her license.

(Amended by Stats. 1972, c. 300, p. 572, 1; Stats. 1994, c. 1275 (SB 2101), § 14.)

2760.1. Reinstatement; Modification of Penalty; Petition; Hearing

(a) A registered nurse whose license has been revoked, or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including reduction or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action, or if the order of the board or any portion of it is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) At least three years for reinstatement of a license that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its order a lesser period of time provided that the period shall be not less than one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The hearing may be continued from time to time as the board deems appropriate.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The petitioner shall provide a current set of fingerprints accompanied by the necessary fingerprinting fee.

(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or subject to an order of registration as a mentally disordered sex offender pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(h) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(Added by Stats. 1994, c. 1275 (SB 2101), § 15.)

2761. Grounds for Discipline; Evidence of Conviction

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence thereof.

(3) The use of advertising relating to nursing which violates Section 17500.

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(b) Procuring his or her certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing, or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it.

(e) Making or giving any false statement or information in connection with the application for issuance of a certificate or license.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a certificate or license.

(h) Impersonating another certified or licensed practitioner, or permitting or allowing another person to use his or her certificate or license for the purpose of nursing the sick or afflicted.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5.

(j) Holding oneself out to the public or to any practitioner of the healing arts as a "nurse practitioner" or as meeting the standards established by the board for a nurse practitioner unless meeting the standards established by the board pursuant to Article 8 (commencing with Section 2834) or holding oneself out to the public as being certified by the board as a nurse anesthetist, nurse midwife, or public health nurse unless the person is at the time so certified by the board.

(k) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Dental Examiners, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risks of transmission.

(Amended by Stats. 1991, c. 1180 (SB 1070), § 4; Stats. 1992, c. 1350 (SB 1813), § 4; Stats. 1994, c. 26 (AB 1807), § 61, eff. March 30, 1994; Stats. 1994, c. 1275 (SB 2101), § 16.)

2762. Unprofessional Conduct Relating to Controlled Substance or Dangerous Drugs

In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of the Business and Professions Code.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a

record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of such commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

(Amended by Stats. 1984, c. 1635, § 4.)

2764. Jurisdiction to Investigate or Discipline Notwithstanding Lapse or Suspension of License

The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

(Added by Stats. 1953, c. 1053, p. 2521, § 4.)

2765. Conviction Defined; Authority to Suspend, Revoke, or Refuse License

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(Amended by Stats. 1983, c. 696, § 3.)

Article 3.1. Diversion Program

2770. Intent of Legislature

It is the intent of the Legislature that the Board of Registered Nursing seek ways and means to identify and rehabilitate registered nurses whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness so that registered nurses so afflicted may be rehabilitated and returned to the practice of nursing in a manner which will not endanger the public health and safety. It is also the intent of the Legislature

that the Board of Registered Nursing shall implement this legislation by establishing a diversion program as a voluntary alternative to traditional disciplinary actions.

(Added by Stats. 1984, c. 865, § 1.)

2770.1. Definitions

As used in this article:

(a) "Board" means the Board of Registered Nursing.

(b) "Committee" means a diversion evaluation committee created by this article.

(Added by Stats. 1984, c. 865, § 1.)

2770.2. Diversion Evaluation Committees; Members

One or more diversion evaluation committees is hereby created in the state to be established by the board. Each committee shall be composed of five persons appointed by the board. No board member shall serve on any committee.

Each committee shall have the following composition:

(a) Three registered nurses, holding active California licenses, who have demonstrated expertise in the field of chemical dependency or psychiatric nursing.

(b) One physician, holding an active California license, who specializes in the diagnosis and treatment of addictive diseases or mental illness.

(c) One public member who is knowledgeable in the field of chemical dependency.

It shall require a majority vote of the board to appoint a person to a committee. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion the board may stagger the terms of the initial members appointed.

(Added by Stats. 1984, c. 865, § 1.)

2770.3. Per Diem and Expenses

Each member of a committee shall receive per diem and expenses as provided in Section 103.

(Added by Stats. 1984, c. 865, § 1.)

2770.4. Quorum; Majority Vote

Three members of a committee shall constitute a quorum for the transaction of business at any meeting. Any action requires a majority vote of the committee.

(Added by Stats. 1984, c. 865, § 1.)

2770.5. Chairperson; Vice Chairperson

Each committee shall elect from its membership a chairperson and a vice chairperson.

(Added by Stats. 1984, c. 865, § 1.)

2770.6. Board to Administer Article

The board shall administer the provisions of this article.

(Added by Stats. 1984, c. 865, § 1.)

2770.7. Acceptance, Denial, or Termination of Registered Nurses in Program

The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested diversion and supervision by a committee shall participate in the program.

(Added by Stats. 1984, c. 865, § 1.)

2770.8. Duties and Responsibilities of Committees

Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board and to consider the recommendations of its licensed physician or registered nurse consultant in the admission of the registered nurse to the diversion program.

(b) To review and designate those treatment facilities and services to which registered nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.

(f) To prepare reports to be submitted to the board.

(g) To set forth in writing for each registered nurse participating in a program a rehabilitation program established for that registered nurse with the requirements for supervision and surveillance.

(Added by Stats. 1984, c. 865, § 1.)

2770.9. Required Information to Nurses Requesting Participation in Program

The committee shall inform each registered nurse who requests participation in a program of the procedures followed in the program, of the rights and responsibilities of the registered nurse in the program, and of the possible results of noncompliance with the program.

(Added by Stats. 1984, c. 865, § 1.)

2770.10. Committee Meetings; Closed Sessions

Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session to consider reports pertaining to any registered nurse requesting or participating in a diversion program. A committee shall only convene in closed session to the extent that it is necessary to protect the privacy of such a licensee.

(Added by Stats. 1984, c. 865, 1; Stats. 1993, c. 589 (AB 2211), § 6.)

2770.11. Rehabilitation Program; Cooperation

Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by a

committee. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for failure to comply with the provisions of a rehabilitation program shall be reported to the board.

(Added by Stats. 1984, c. 865, § 1.)

2770.12. Rehabilitation Program Completed; Records Confidential

(a) After a committee in its discretion has determined that a registered nurse has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the registered nurse's participation in a diversion program.

(b) All board and committee records and records of a proceeding pertaining to the rehabilitation of a registered nurse in a program shall be kept confidential and are not subject to discovery or subpoena.

(Added by Stats. 1984, c. 865, § 1.)

2770.13. Action for Defamation; Representation for Persons Making Reports to Committee or Board

The board shall provide for the representation of any person making reports to a committee or the board under this article in any action for defamation directly resulting from reports or information given to a committee or the board regarding a registered nurse's participation in a diversion program.

(Added by Stats. 1984, c. 865, § 1.)

2770.14. Biannual Committee Reports

The board shall require biannual reports from each committee which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(Added by Stats. 1984, c. 865, § 1.)

Article 3.5. Nursing Corporations

2775. Corporate Status; Governmental Agency

A nursing corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are registered nurses are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

With respect to a nursing corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Registered Nursing.

(Added by Stats. 1981, c. 621, p. 2371, § 2.)

2776. Unprofessional Conduct; Violations

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

(Added by Stats. 1981, c. 621, p. 2371, § 2.)

2777. Unprofessional Conduct, Compliance with Other Statutes and Regulations

A nursing corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation, now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a person holding a license under this chapter.

(Added by Stats. 1981, c. 621, p. 2371, § 2.)

2778. Name

The name of a nursing corporation and any name or names under which it may render professional services shall contain the words "nursing" or "registered nursing," and wording or abbreviations denoting corporate existence.

(Added by Stats. 1981, c. 621, p. 2371, § 2.)

2779. Shareholders, Directors and Officers; License Requirements

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a nursing corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

(Added by Stats. 1981, c. 621, p. 2371, § 2.)

2780. Income; Exclusion of Disqualified Shareholders

The income of a nursing corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in the nursing corporation.

(Added by Stats. 1981, c. 621, p. 2371, § 2.)

2781. Regulations

The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a nursing corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such regulations may provide, and (b) that a nursing corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

(Added by Stats. 1981, c. 621, p. 2371, § 2.)

Article 4. Nursing Schools

2785. List of Approved Schools

The board shall prepare and maintain a list of approved schools of nursing in this state whose graduates, if they have the other necessary qualifications provided in this chapter, shall be eligible to apply for a license to practice nursing in this state.

(Amended by Stats. 1983, c. 742, § 5.)

2786. Approved Schools; Required Subjects for Instruction; Minimum Units of Theory and Clinical Experience; Analysis of Practice at Entry Level

(a) An approved school of nursing is one which has been approved by the board, gives the course of instruction approved by the board, covering not less than two academic years, and is affiliated or conducted in connection with one or more hospitals, and is an institution of higher education or is affiliated with an institution of higher education. For purposes of this section, "institution of higher education" includes community colleges offering an associate degree. An approved school of nursing which is not an institution of higher education shall make an agreement with an institution of higher education in the same general location to grant an associate of arts degree to individuals who graduate from such school of nursing or to grant a baccalaureate degree in nursing with successful completion of an additional course of study as approved by the board and the institution involved.

(b) The board shall determine by regulation the required subjects of instruction to be completed in an approved school of nursing for licensure as a registered nurse and shall include the minimum units of theory and clinical experience necessary to achieve essential clinical competency at the entry level of the registered nurse. The board's standards shall be designed to encourage all schools to provide clinical instruction in all phases of the educational process.

(c) The board shall perform or cause to be performed an analysis of the practice of the registered nurse at the entry level at least every eight years. The determination of the required subjects of instruction shall include, but not be limited to, the above analysis.

(Amended by Stats. 1985, c. 1055, § 2.)

2786.6. Denial or Revocation of Approval; Failure to Credit Student Education and Knowledge; Discrimination Against Students; Regulation Concerning Credit

The board shall deny the application for approval made by, and shall revoke the approval given to, any school of nursing which:

(a) Does not give to student applicants credit, in the field of nursing, for previous education and the opportunity to obtain credit for other acquired knowledge by the use of challenge examinations or other methods of evaluation; or,

(b) Is operated by a community college and discriminates against an applicant for admission to a school solely on the grounds that the applicant is seeking to fulfill the units of nursing required by Section 2736.6.

The board shall prescribe, by regulation, the education for which credit is to be given and the amount of credit which is to be given for each type of education. The word "credit," as used in the preceding sentence, is limited to credit for licensure only. The board is not authorized to prescribe the credit which an approved school of nursing shall give toward an academic certificate or degree.

(Amended by Stats. 1983, c. 742, § 8.)

2788. Inspection; Reports; Notice to School of Defects; Removal from Approved List

It shall be the duty of the board, through its executive officer, to inspect all schools of nursing in this state at such times as the board shall deem necessary. Written reports of the executive officer's visits shall be made to the board, which shall thereupon approve those schools of nursing that meet the requirements provided by the board.

Upon receiving the report of the executive officer, if the board determines that any approved school of nursing is not maintaining the standard required by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the school. If the defects are not corrected within a reasonable time, the school of nursing may be removed from the approved list and notice thereof in writing given to it.

(Amended by Stats. 1983, c. 742, § 10.)

2789. Exemption of Religious Schools

None of the provisions of this chapter shall be applicable to any school or schools conducted by any well recognized church or denomination for the purpose of training the adherents of such church or denomination in the care of the sick in accordance with its religious tenets.

(Added by Stats. 1939, c. 807, p. 2355, § 2.)

Article 5. Penal Provisions

2795. Unlicensed Practice or Indication of Practice

Except as provided in this chapter, it is unlawful for any person to do any of the following:

(a) To practice or to offer to practice nursing in this state unless the person holds a license in an active status.

(b) To use any title, sign, card, or device to indicate that he or she is qualified to practice or is practicing nursing, unless the person has been duly licensed or certified under this chapter.

(Amended by Stats. 1990, c. 350 (SB 2084), § 2.)

2796. Use of Title; Impersonation or Pretense of Being Professional Nurse

It is unlawful for any person or persons not licensed or certified as provided in this chapter to use the title "registered nurse," the letters "R.N.," or the words "graduate nurse," "trained nurse," or "nurse anesthetist."

It is unlawful for any person or persons not licensed or certified as provided in this chapter to impersonate a professional nurse or pretend to be licensed to practice professional nursing as provided in this chapter.

(Amended by Stats. 1983, c. 696, § 5.)

2797. Misrepresentation or Impersonation Connected with License Application or Examination

It is unlawful for a person to willfully make any false representation or to impersonate any other person or permit or aid any person in any manner to impersonate him in connection with any examination or application for a license, or request to be examined or licensed.

(Added by Stats. 1939, c. 807, p. 2536, § 2.)

2798. Conducting Unaccredited School; Exception of Religious Schools

It is unlawful for anyone to conduct a school of nursing unless the school has been approved as an accredited school by the board.

This section is not applicable to schools conducted under Section 2789 of this chapter.

(Amended by Stats. 1961, c. 1823, p. 3891, § 6.)

2799. Violation as Misdemeanor

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and upon a conviction thereof shall be punished by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(Amended by Stats. 1983, c. 1092, § 10. eff. Sept. 27, 1983, operative Jan. 1, 1984.)

2800. Exceptions; Use of Word "Nurse" Alone

None of the sections in this article, except Sections 2796 and 2797, shall be applicable to any person or persons specifically exempted from the general provisions of this act by Section 2731 hereof, or to schools conducted by any well recognized church or denomination for the purpose of training the adherents of such church or denomination in the care of the sick in accordance with its religious tenets; and any adherent of any well recognized church or denomination who engages in nursing or the care of the sick in connection with the practice of the religious tenets of such well recognized church or denomination may use the word "nurse" in connection with or following his or her name, provided he or she shall not use the title "registered nurse," the letters "R.N.," the words "graduate nurse," "trained nurse," "nurse anesthetist," or any other name, word or symbol in connection with or following his or her name so as to lead another or others to believe that he or she is a professional nurse licensed under the provisions of this chapter.

(Amended by Stats. 1983, c. 696, § 6.)

Article 6. Revenue

2810. Establishment of Fund

There is established in the State Treasury a Board of Registered Nursing Fund. The California Board of Nursing Education and Nurse Registration Fund of the State of California is abolished. The Controller, on, January 1, 1975, shall transfer any balance in that fund to the Board of Registered Nursing Fund. Any reference in state law to the Board of Nurse Examiners

Fund or the Board of Nurse Examiners Fund of the State of California shall be construed to refer to the Board of Registered Nursing Fund.

(Amended by Stats. 1974, c. 632, p. 1484, § 8.)

2811. Renewals; Fees; Expiration and Reinstatement

(a) Each person holding a regular renewable license under this chapter, whether in an active or inactive status, shall apply for a renewal of his license and pay the biennial renewal fee required by this chapter each two years on or before the last day of the month following the month in which his birthday occurs, beginning with the second birthday following the date on which the license was issued, whereupon the board shall renew the license.

(b) Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of nonpayment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

(c) A license in an inactive status may be restored to an active status if the licensee meets the continuing education standards of Section 2811.5.

(Amended by Stats. 1976, c. 1053, p. 4680, § 6, eff. Sept. 20, 1976.)

2811.5. Renewals; Proof of Continuing Education; Regulations Establishing Standards

(a) Each person renewing his or her license under Section 2811 shall submit proof satisfactory to the board that, during the preceding two-year period, he or she has been informed of the developments in the registered nurse field or in any special area of practice engaged in by the licensee, occurring since the last renewal thereof, either by pursuing a course or courses of continuing education in the registered nurse field or relevant to the practice of the licensee, and approved by the board; or by other means deemed equivalent by the board.

(b) For purposes of this section, the board shall, by regulation, establish standards for continuing education. The standards shall be established in a manner to assure that a variety of alternative forms of continuing education are available to licensees including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension studies, and home study programs. The standards shall take cognizance of specialized areas of practice. The continuing education standards established by the board shall not exceed 30 hours of direct participation in a course or courses approved by the board, or its equivalent in the units of measure adopted by the board.

(c) The board shall encourage continuing education in spousal or partner abuse detection and treatment. In the event the board establishes a

requirement for continuing education coursework in spousal or partner abuse detection or treatment, that requirement shall be met by each licensee within no more than four years from the date the requirement is imposed.

(d) This section shall not apply to licensees during the first two years immediately following their initial licensure in California or any other governmental jurisdiction.

(e) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for licensees residing in another state or country, or for reasons of health, military service, or other good cause.

This section shall become operative on July 1, 1978.

(Amended by Stats. 1990, c. 1207 (AB 3242), § 2; Stats. 1993, ch. 1234 (AB 809), § 6.)

2811.6. Continuing Education Programs; Records of Courses; Inspection

Providers of continuing education programs approved by the board pursuant to Section 2811.5 shall make available for board inspection records of continuing education courses given to registered nurses.

(Added by Stats. 1978, c. 167, p. 396, § 1.)

2812. Monthly Report and Disposition of Collections

Within 10 days after the beginning of each month, the board shall report to the State Controller the amount and source of all collections made under this chapter. At the same time, all such amounts shall be paid into the State Treasury, where they shall be placed to the credit of the Board of Registered Nursing Fund and to the Registered Nurse Education Fund, as specified in Section 128400 of the Health and Safety Code.

(Amended by Stats. 1988, c. 252, § 1; Stats. 1996, c. 1023 (SB 1497), § 11, eff. Sept. 29, 1996.)

2814. Appropriation of Fund

All money in the Board of Registered Nursing Fund is hereby appropriated to carry out the provisions of this chapter, and the promotion of nursing education in this state.

(Amended by Stats. 1974, c. 632, p. 1484, § 10.)

2815. Fee; Registered Nurses

Subject to the provisions of Section 128.5, the amount of the fees prescribed by this chapter in connection with the issuance of licenses for registered nurses under its provisions is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application for a licensure by examination shall be fixed by the board at not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150).

(b) The fee to be paid for taking each examination shall be the actual cost to purchase an examination from a vendor approved by the board.

(c) The fee to be paid for application for licensure by endorsement shall be fixed by the board at not less than fifty dollars (\$50) nor more than one hundred dollars (\$100).

(d) The biennial fee to be paid upon the filing of an application for renewal of the license shall be not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150). In addition, an assessment of five

dollars (\$5) shall be collected and credited to the Registered Nurse Education Fund, pursuant to Section 2815.1.

(e) The penalty fee for failure to renew a license within the prescribed time shall be fixed by the board at not more than 50 percent of the regular renewal fee, but not less than thirty-seven dollars (\$37) nor more than seventy-five dollars (\$75).

(f) The fee to be paid for approval of a continuing education provider shall be fixed by the board at not less than two hundred dollars (\$200) nor more than three hundred dollars (\$300).

(g) The biennial fee to be paid upon the filing of an application for renewal of provider approval shall be fixed by the board at not less than two hundred dollars (\$200) nor more than three hundred dollars (\$300).

(h) The penalty fee for failure to renew provider approval within the prescribed time shall be fixed at not more than 50 percent of the regular renewal fee, but not less than one hundred dollars (\$100) nor more than one hundred fifty dollars (\$150).

(i) The penalty for submitting insufficient funds or fictitious check, draft or order on any bank or depository for payment of any fee to the board shall be fixed at not less than fifteen dollars (\$15) nor more than thirty dollars (\$30).

(j) The fee to be paid for an interim permit shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).

(k) The fee to be paid for a temporary license shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).

(l) The fee to be paid for processing endorsement papers to other states shall be fixed by the board at not less than sixty dollars (\$60) nor more than one hundred dollars (\$100).

(m) The fee to be paid for a certified copy of a school transcript shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).

(n) The fee to be paid for a duplicate license shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).

(o) The fee to be paid by a registered nurse for an evaluation of his or her qualifications to use the title "nurse practitioner" shall be fixed by the board at not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150).

No further fee shall be required for a license or a renewal thereof other than as prescribed by this chapter.

(Amended by Stats. 1991, c. 352 (AB 485), § 1.)

2815.1. Biennial Licensure Renewal; Assessment

As provided in subdivision (d) of Section 2815, the Board of Registered Nursing shall collect an additional five dollar (\$5) assessment at the time of the biennial licensure renewal. This amount shall be credited to the Registered Nurse Education Fund. This assessment is separate from those fees prescribed in Section 2815.

This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

(Amended by Stats. 1991, c. 352 (AB 485), § 2.)

2815.5. Fees; Nurse-Midwives

The amount of the fees prescribed by this chapter in connection with the issuance of certificates as nurse-midwives is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application for a certificate shall be fixed by the board at not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150).

(b) The biennial fee to be paid upon the application for a renewal of a certificate shall be fixed by the board at not less than fifty dollars (\$50) nor more than one hundred dollars (\$100).

(c) The penalty fee for failure to renew a certificate within the prescribed time shall be 50 percent of the renewal fee in effect on the date of the renewal of the license, but not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50).

(d) The fee to be paid upon the filing of an application for the nurse-midwife equivalency examination shall be fixed by the board at not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200).

(Amended by Stats. 1991, c. 352 (AB 485), § 3.)

2815.7. Fee Increases; Proposal or Adoption; Report to Committees

The board shall report to the appropriate policy and fiscal committees of each house of the Legislature whenever the board proposes or adopts an increase in any fee imposed pursuant to this chapter. The board shall specify the reasons for each fee increase and shall identify the percentage of the funds derived from an increase in any fee that will be used for investigational or enforcement related activities by the board.

(Added by Stats. 1991, c. 352 (AB 485), § 4.)

Article 6.5. Public Health Nurse Certification

2816. Fee for Evaluation of Qualifications

The nonrefundable fee to be paid by a registered nurse for an evaluation of his or her qualifications to use the title "public health nurse" shall be equal to the fees set out in subdivision (o) of Section 2815. All fees payable under this section shall be collected by and paid to the Registered Nursing Fund. It is the intention of the Legislature that the costs of carrying out the purposes of this article shall be covered by the revenue collected pursuant to this section.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.8.)

2817. Training Requirements

The qualifications prescribed by the board under this article shall include a requirement that an applicant for employment as a public health nurse and all public health nurses employed on or after January 1, 1981, acquire training in child abuse and neglect detection.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.8.)

2818. Certification Requirement; Legislative Findings

The Legislature recognizes that public health nursing is a service of crucial importance for the health, safety, and sanitation of the population in all of California's communities. These services currently include, but are not limited to:

- (1) Control and prevention of communicable disease.
- (2) Promotion of maternal, child, and adolescent health.
- (3) Prevention of abuse and neglect of children, elders, and spouses.
- (4) Outreach screening, case management, resource coordination and assessment, and delivery and evaluation of care for individuals, families, and communities.

(b) The Legislature also finds that conflicting definitions of "public health nurse" have been created by various state and local agencies within California. The Legislature also finds that the public is harmed by the conflicting usage of the title "public health nurse" and lack of consistency between the use of the term and the qualifications required in state law and in administrative regulations. Therefore, the Legislature finds that the public interest would be served by determining the conditions for the legitimate use by registered nurses of a title which includes the term "public health nurse."

(c) No individual shall hold himself or herself out as a public health nurse or use a title which includes the term "public health nurse" unless that individual is in possession of a valid California public health nurse certificate issued pursuant to this article.

(d) No employer subject to regulation by Section 602 of the Health and Safety Code shall hold out any employee to be a public health nurse or grant a title to any employee including the term "public health nurse" unless that employee holds a valid California public health nurse certificate pursuant to this article.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.8.)

2819. Regulations for Issuance of Public Nursing Certificates

In order to effect a speedy and efficient transfer of public health nurse certification from the State Department of Health Services to the board, existing Sections 4500 to 4504, inclusive, of Title 17 of the California Code of Regulations shall be repealed by the State Department of Health Services and adopted by the board to place them in Chapter 14 of Title 16 of the California Code of Regulations, and any reference to the State Department of Health Services in those regulations shall be changed to refer to the board. The repeal of the regulations and adoption of the revised regulations pursuant to this section shall be exempt from the Administrative Procedure

Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that the repealed and adopted regulations shall be filed with the Office of Administrative Law for publication in the California Code of Regulations.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.8.)

2820. Scope of Registered Nurse Practice

Nothing in this article shall be construed as expanding the scope of practice of a registered nurse beyond that which is authorized under Section 2725.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.8.)

Article 7. Nurse Anesthetists

2825. Short Title

This article may be cited as the Nurse Anesthetists Act.

(Added by Stats. 1983, c. 696, § 7.)

2826. Definitions

As used in this article:

(a) "Nurse anesthetist" means a person who is a registered nurse, licensed by the board and who has met standards for certification from the board. In the certification and recertification process the board shall consider the standards of the Council on Certification of Nurse Anesthetists and the Council on Recertification of Nurse Anesthetists and may develop new standards if there is a public safety need for standards more stringent than the councils' standards. In determining the adequacy for public safety of the councils' standards or in developing board standards, the board shall comply with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) "Accredited Program" means a program for the education of nurse anesthetists which has received approval from the board. In the approval process the board shall consider the standards of the Council on Accreditation of Nurse Anesthesia Education Programs and Schools and may develop new standards if the councils' standards are determined to be inadequate for public safety. In determining the adequacy for public safety of the councils' standards or in developing board standards, the board shall comply with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) "Appropriate committee" means the committee responsible for anesthesia practice which is responsible to the executive committee of the medical staff.

(d) "Trainee" means a registered nurse enrolled in an accredited program of nurse anesthesia.

(e) "Graduate" means a nurse anesthetist who is a graduate of an accredited program of nurse anesthesia awaiting initial certification results for not more than one year from the date of graduation.

(Added by Stats. 1983, c. 696, § 7.)

2827. Utilization; Acute Care Facility; Approval; Dental Offices

The utilization of a nurse anesthetist to provide anesthesia services in an acute care facility shall be approved by the acute care facility administration and the appropriate committee, and at the discretion of the physician, dentist or podiatrist. If a general anesthetic agent is administered in a dental office, the dentist shall hold a permit authorized by Section 1646.

(Added by Stats. 1983, c. 696, § 7.)

2828. Subjection to Bylaws of Acute Care Facility; Liability for Professional Acts

In an acute care facility, a nurse anesthetist who is not an employee of the facility shall, nonetheless, be subject to the bylaws of the facility and may be required by the facility to provide proof of current professional liability insurance coverage. Notwithstanding any other provision of law, a nurse anesthetist shall be responsible for his or her own professional conduct and may be held liable for those professional acts.

(Added by Stats. 1983, c. 696, § 7.)

2829. Use of Title

It is unlawful for any person or persons to advertise, use any title, sign, card, or device, or to otherwise hold himself or herself out as a "nurse anesthetist" unless the person meets the requirements of subdivision (a) of Section 2826 and has been so certified under the provisions of this article.

(Added by Stats. 1983, c. 696, § 7.)

2830. Certificate to Practice; Issuance to Qualified Person

The board shall issue a certificate to practice nurse anesthesia to any person who qualifies under this article and is licensed pursuant to the provisions of this chapter.

(Added by Stats. 1983, c. 696, § 7.)

2830.5. Evidence of Qualifications; Presentation by Applicant

Every applicant shall show by evidence satisfactory to the board that he or she has met the requirements of this article.

(Added by Stats. 1983, c. 696, § 7.)

2830.6. Certification; Standards; Documentation; Filing; Issuance of Certificate

Notwithstanding Section 2830, the board shall certify all applicants who can show certification by the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists as of the effective date of this chapter. This certification shall be documented to the board in a manner to be determined by the board. Proof of certification shall be filed with the board within six months from the effective date of this article and the board shall, within one year from the effective date of this article, issue a certificate to applicants who have filed proof of certification within that six-month period.

(Added by Stats. 1983, c. 696, § 7.)

2830.7. Fee Schedule

The amount of the fees prescribed by this chapter in connection with the issuance of certificates as nurse anesthetists is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application for a certificate shall be fixed by the board at not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150).

(b) The biennial fee to be paid upon the application for a renewal of a certificate shall be fixed by the board at not less than fifty dollars (\$50) nor more than one hundred dollars (\$100).

(c) The penalty fee for failure to renew a certificate within the prescribed time shall be 50 percent of the renewal fee in effect on the date of the renewal of the license, but not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50).

(Added by Stats. 1991, c. 352 (AB 485), § 4.5.)

2831. Written Application; Fee; Submission

An applicant for certification pursuant to this article shall submit a written application in the form prescribed by the board, accompanied by the fee prescribed by Section 2830.7 which shall also apply to the issuance of a certificate under the provisions of this article.

(Amended by Stats. 1991, c. 352 (AB 485), § 5.)

2832. Applicants; Compliance with Provisions of Article

Every applicant for a certificate to practice nurse anesthesia shall comply with all the provisions of this article in addition to the provisions of this chapter.

(Added by Stats. 1983, c. 696, § 7.)

2833. Certificates; Biennial Renewal; Fee; Expiration; Reinstatement

Each certificate issued pursuant to this article shall be renewable biennially, and each person holding a certificate under this article shall apply for a renewal of his or her certificate and pay the biennial renewal fee required by Section 2830.7 every two years on or before the last day of the month following the month in which his or her birthday occurs, beginning with the second birthday following the date on which the certificate was issued, whereupon the board shall renew the certificate.

Each certificate not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by Section 2830.7 and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during that eight-year period no examination shall be required as a condition for the reinstatement of any expired certificate which has lapsed solely by reason of nonpayment of the renewable fee. After the expiration of the eight-year period the board may require as a condition of reinstatement that the applicant pass an examination as it deems necessary to determine his or her present fitness to resume the practice of nurse anesthesia.

(Amended by Stats. 1991, c. 352 (AB 485), § 6.)

2833.3. Inapplicability of Article to Practice of Nursing

Nothing in this article shall be construed to limit a certified nurse anesthetist's ability to practice nursing.

(Added by Stats. 1983, c. 696, § 7.)

2833.5. Practice of Nurse Anesthetist to Not Confer Authority to Practice Medicine or Surgery

Except as provided in Section 2725 and in this section, the practice of nurse anesthetist does not confer authority to practice medicine or surgery.

(Added by Stats. 1983, c. 696, § 7.)

2833.6. Inapplicability of Chapter to Scope of Practice of Nurse Anesthetist

This chapter is not intended to address the scope of practice of, and nothing in this chapter shall be construed to restrict, expand, alter, or modify the existing scope of practice of, a nurse anesthetist.

(Added by Stats. 1983, c. 696, § 7.)

Article 8. Nurse Practitioners

2834. Legislative Findings

The Legislature finds that various and conflicting definitions of the nurse practitioner are being created by state agencies and private organizations within California. The Legislature also finds that the public is harmed by conflicting usage of the title of nurse practitioner and lack of correspondence between use of the title and qualifications of the registered nurse using the title. Therefore, the Legislature finds the public interest served by determination of the legitimate use of the title "nurse practitioner" by registered nurses.

(Added by Stats. 1977, c. 439, p. 1475, § 2.)

2835. Necessity to Be Licensed and Meet Board Standards

No person shall advertise or hold himself out as a "nurse practitioner" who is not a nurse licensed under this chapter and does not, in addition, meet the standards for a nurse practitioner established by the board.

(Added by Stats. 1977, c. 439, p. 1475, § 2.)

2835.5. Submission of Information and Credentials for Determination of Qualification for Use of Title; Certificate; Application of Section

On and after January 1, 1985, any registered nurse who is holding himself or herself out as a nurse practitioner or who desires to hold himself or herself out as a nurse practitioner shall, within the time prescribed by the board and prior to his or her next license renewal or the issuance of an initial license, submit educational, experience, and other credentials and information as the board may require for it to determine that the person qualifies to use the title "nurse practitioner," pursuant to the standards and qualifications established by the board.

Upon finding that a person is qualified to hold himself or herself out as a nurse practitioner, the board shall appropriately indicate on the license

issued or renewed, that the person is qualified to use the title "nurse practitioner." The board shall also issue to each qualified person a certificate evidencing that the person is qualified to use the title "nurse practitioner."

Any person who has been found to be qualified by the board to use the title "nurse practitioner" prior to the effective date of this section, shall not be required to submit any further qualifications or information to the board and shall be deemed to have met the requirements of this section.

(Added by Stats. 1984, c. 525, § 2.)

2836. Establishment of Categories and Standards; Consultations

The board shall establish categories of nurse practitioners and standards for nurses to hold themselves out as nurse practitioners in each category. Such standards shall take into account the types of advanced levels of nursing practice which are or may be performed and the clinical and didactic education, experience, or both needed to practice safely at those levels. In setting such standards, the board shall consult with nurse practitioners, physicians and surgeons with expertise in the nurse practitioner field, and health care organizations utilizing nurse practitioners. Established standards shall apply to persons without regard to the date of meeting such standards. If the board sets standards for use of nurse practitioner titles which include completion of an academically affiliated program, it shall provide equivalent standards for registered nurses who have not completed such a program.

(Added by Stats. 1977, c. 439, p. 1475, § 2.)

2836.1. Furnishing Drugs or Devices

Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing drugs or devices when all of the following apply:

(a) The drugs or devices are furnished by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and his or her supervising physician and surgeon under any of the following circumstances:

- (1) When furnished incidental to the provision of family planning services.
- (2) When furnished incidental to the provision of routine health care or prenatal care.
- (3) When rendered to essentially healthy persons.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or his or her designee.

(c) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish drugs or devices, which drugs or devices may be furnished, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure.

(d) The furnishing of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.

(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.

(f) Drugs or devices furnished by a nurse practitioner may include Schedule III through Schedule V controlled substances under the California Uniform Controlled Substances Act, (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure. When Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished by a nurse practitioner, the controlled substances shall be furnished in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.

(g) The board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed (1) at least six month's physician and surgeon-supervised experience in the furnishing of drugs or devices and (2) a course in pharmacology covering the drugs or devices to be furnished under this section. The board shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term "furnishing" in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.

(i) Nothing in this section, nor any other provision of law, shall be construed to authorize a nurse practitioner in solo practice to furnish drugs or devices, under any circumstances.

(Amended by Stats. 1991, c. 870 (AB 1350), § 3; Stats. 1996, c. 455 (AB 1077), § 1.)

2836.2. Furnishing of Drugs or Devices Defined

Furnishing of drugs or devices by nurse practitioners is defined to mean the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure.

(Added by Stats. 1986, c. 493, § 3.)

2836.3. Issuance of Numbers to Nurse Applicants; Fees; Renewal

(a) The furnishing of drugs or devices by nurse practitioners is conditional on issuance by the board of a number to the nurse applicant who has successfully completed the requirements of subdivision (g) of Section 2836.1.

The number shall be included on all transmittals of orders for drugs or devices by the nurse practitioner. The board shall make the list of numbers issued available to the Board of Pharmacy. The board may charge the applicant a fee to cover all necessary costs to implement this section.

(b) The number shall be renewable at the time of the applicant's registered nurse license renewal.

(c) The board may revoke, suspend, or deny issuance of the numbers for incompetence or gross negligence in the performance of functions specified in Sections 2836.1 and 2836.2.

(Added by Stats. 1986, c. 493, § 4.)

2837. Construction of Article

Nothing in this article shall be construed to limit the current scope of practice of a registered nurse authorized pursuant to this chapter.

(Added by Stats. 1977, c. 439, p. 1475, § 2.)

Resolution Chapter 156

Assembly Concurrent Resolution No. 103—Relative to nursing.

[Filed with Secretary of State November 27, 1972.]

WHEREAS, The licensing laws for physicians, registered nurses, and licensed vocational nurses are ambiguous concerning the performance of certain roles by registered nurses and vocational nurses, and of the congruent roles of nurses and physicians; and

WHEREAS, commencing in 1957, the California Nurses' Association, the California Medical Association, and the California Hospital Association have developed and distributed a series of joint statements on the role of the registered nurse in meeting new and changing needs of patient care and on the congruent roles of the nurse and the physician; and

WHEREAS, the joint statements have primarily functioned to validate developments in practice after the changes have become common practice, and have not been used to anticipate new needs or to encourage responsible innovative demonstrations of methods and practice for registered nurses and licensed vocational nurses; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That it will best serve the public interest if such joint statements are utilized in cases of conflicting or absent statutory definition to validate generally accepted practices or patterns of care, and in addition, to assist the Legislature, licensing boards, other appropriate agencies, and responsible professional associations in anticipating new needs, making responsible innovations in practice patterns, and developing demonstration projects, all in the interest of patient care; and be it further

Resolved, That it is in the public interest that such joint statements are made a matter of public record for information and guidance to educators, practitioners, the public and the Legislature, and it is therefore directed that permanent files of such joint statements be maintained by the State Department of Public Health, the Board of Medical Examiners of the State of California, the California Board of Nursing Education and Nurse Registration

and the Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California, for public inspection; and it is further directed that the State Department of Public Health report annually to the Legislature as to new joint statements or modifications of existing joint statements; and be it further

Resolved, That the appropriate professional organizations representing physicians, registered nurses, vocational nurses, and hospitals are encouraged to form a joint practice commission which shall have as one of its purposes the encouragement, development, modification and publication of joint statements and interdisciplinary accords relating to needs and methodology of better and more effective nursing care.

TITLE 16. CALIFORNIA CODE OF REGULATIONS

Division 14. Board of Registered Nursing

Article 1. General Provisions Section

1402. Definitions.

For the purpose of this chapter, the term "board" means the California Board of Registered Nursing; and the term "code" means the Business and Professions Code.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2715, Business and Professions Code.

HISTORY:

1. Amendment filed 8-28-61 as procedural and organizational; designated effective 9-15-61 (Register 61, No. 17).
2. Amendment filed 3-28-75 as procedural and organizational; effective upon filing (Register 75, No. 13).
3. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1403. Delegation of Certain Functions.

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his/her absence from the office of the board, his/her designee.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2708, Business and Professions Code.

HISTORY:

1. Amendment filed 5-22-84; effective thirtieth day thereafter (Register 84, No. 21).

1405. Authority of Executive Officer.

The executive officer is authorized to:

- (a) Plan, direct supervise and organize the work of the staff of the board.
- (b) Research nursing practice issues and proposed positions to the board based on the board's interpretation of the Nursing Practice Act and other related statutes or regulations.
- (c) Implement regulations adopted by the board.
- (d) Administer examinations, collect fees, issue licenses and permits and investigate complaints.
- (e) Implement and enforce all standards including those set for schools of nursing, which include inspecting and evaluating schools of nursing and making recommendations on accreditation.

(f) Manage funds and administer the fund and budget according to board directions.

(g) Report to the board on implementation of board policies and responses to board activity.

(h) Represent the board, as appropriate, to the public and the media.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2708, Business and Professions Code.

HISTORY:

1. New section filed 10-14-53 as procedural and organizational; effective upon filing (Register 53, No. 18).
2. Renumbering from 1410.5 to 1405 and amendment filed 2-5-64; effective thirtieth day thereafter (Register 64, No. 3).
3. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

Article 2. Registration and Examination

1409. Issuance of License.

A license as a registered nurse shall be issued only by examination except as provided in Section 2732.1(b) of the code.

HISTORY:

1. Amendment filed 2-23-66; effective thirtieth day thereafter (Register 66, No. 6).
2. Amendment refiled 3-8-66; effective thirtieth day thereafter (Register 66, No. 7).

1409.1. Filing of Names and Addresses.

Each person holding a certificate, license or any other authority to practice nursing or engage in any activity under any laws administered by the board shall file his/her current name and mailing address with the board at its office in Sacramento within thirty (30) days after any change of name or mailing address, giving both old and new name, and address, as appropriate.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2715, Business and Professions Code.

HISTORY:

1. Renumbering of former Section 1419.2 to Section 1409.1 filed 4-7-87; operative 5-7-87 (Register 87, No. 16).

1410. Application.

(a) An application for a license as a registered nurse by examination shall be submitted on an application form provided by the board, and filed with the board at its office in Sacramento. An application shall be accompanied by the fee and such evidence, statements or documents as therein required including evidence of eligibility to take the examination. The applicant shall submit an additional application and fee for the examination to the board or to its examination contractor, as directed by the board. The Board shall provide the contractor's application to the applicant. No license shall be issued without a complete transcript on file indicating successful completion of the courses prescribed by the board for licensure.

(b) An application for a license as a registered nurse without examination under the provisions of Section 2732.1(b) of the code shall be submitted on an application form prescribed and provided by the board, accompanied by

the appropriate fee and by such evidence, statements, or documents as therein required, and filed with the board at its office in Sacramento.

(c) The applicant shall be notified in writing of the results of the evaluation of his/her application for license if the application is rejected.

(d) A renewal application shall be on a form provided by the board accompanied by the stated fee and filed with the board at its office in Sacramento.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 480, 2729, 2732.1, 2733, 2736, 2736.5, 2736.6, 2737, and 2815 Business and Professions Code.

HISTORY:

1. Amendment filed 1-27-70; effective thirtieth day thereafter (Register 70, No. 5). For prior history, see Register 66, No. 7.
2. Amendment of subsection (a) filed 10-10-75; effective thirtieth day thereafter (Register 75, No. 41).
3. Amendment of subsection (a) filed 5-14-76; effective thirtieth day thereafter (Register 76, No. 20).
4. Amendment of subsection (a) filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).
5. Amendment of subsections (a) and (c) and amendment of Note filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

1410.1. Application Processing Times.

(a) Within 90 calendar days of receipt of an application for original licensure as a registered nurse, provided under the provisions of section 2732.1 of the Code, the board shall inform the applicant in writing that it is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(b) Within 390 calendar days from the date of filing of a completed examination application for original licensure as a registered nurse, the board shall inform the applicant in writing of its decision regarding the application. This time period applies to applicants whose application is complete on the examination deadline date and who take the first available examination.

(c) Within 365 calendar days from the date of filing a completed application for original licensure as a registered nurse without examination, the board shall inform applicant in writing of its decision regarding the application.

(d) The board's actual time periods for processing an application for original licensure as a registered nurse, from the receipt of the initial application to the final decision, based on the two years preceding the proposal of this section were as follows:

Application By Examination		Application Without Examination	
Minimum	127 days	Minimum	11 days
Median	183 days	Median	62 days
Maximum	387 days	Maximum	332 days

Time periods take into account section 1410.4(e) which provides for abandonment of incomplete applications after one year.

NOTE: Authority cited: Section 2715, Business and Professions Code; and Section 15376, Government Code. Reference: Section 2732.1, Business and Professions Code; and Section 15376, Government Code.

HISTORY:

1. New section filed 2-13-91; operative 3-15-91 (Register 91, No. 12).

1410.4. Abandonment of Application.

(a) An applicant whose application for examination has been accepted shall be deemed to have abandoned the application if he/she does not take such examination within a two-year period from the date of the written notice of eligibility to take the examination.

(b) An applicant whose application for examination has been rejected shall be deemed to have abandoned the application if he/she does not submit evidence that he/she has removed the deficiencies specified in the written evaluation notice and take an examination within a three-year period from the date of the written evaluation notice.

(c) An applicant whose application for license without examination has been rejected shall be deemed to have abandoned the application if he/she does not submit evidence that he/she has removed the deficiencies specified in the written evaluation notice within a three-year period from the date of the written evaluation notice.

(d) Submission of additional data, requests for reconsideration or re-evaluation, or other inquiries or statements involving an application shall not extend the respective time periods specified in subdivisions (a), (b), (c), and (e) of this section.

(e) An applicant whose application for license is incomplete shall be deemed to have abandoned the application if he/she does not submit all required documents, data and information within a period of one year from the date of mailing to him/her by the board of a written notice addressed to the last address on file with the board.

(f) An application submitted subsequent to the abandonment of a former application shall be treated as a new application. The applicant must meet all current requirements in effect at the time of reapplication.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2732.1, Business and Professions Code.

HISTORY:

1. Amendment filed 10-17-66; effective thirtieth day thereafter (Register 66, No. 36). For prior history, see Register 66, No. 7.
2. Repealer of subsection (f) and renumbering of subsection (g) to (f) filed 10-10-75; effective thirtieth day thereafter (Register 75, No. 41).
3. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).
4. Amendment of subsections (a) and (f) filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

1411.5. Examination Procedure.

The examination for licensure as a registered nurse shall be a written examination as determined by the board. The board may enter into a contractual agreement for said examination with a public or private organization.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2738 and 2740, Business and Professions Code.

HISTORY:

1. New section filed 1-27-70; effective thirtieth day thereafter (Register 70, No. 5).
2. Amendment filed 2-9-73; effective thirtieth day thereafter (Register 73, No. 6).
3. Amendment filed 3-23-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 12).

1411.6. Examination Disclosure.

An applicant who takes the examination shall not disclose the contents of the written examination questions to anyone other than a person authorized by the Board. No one except as authorized by the Board shall solicit, accept, or compile information regarding the contents of written examination questions, either before, during or after the administration of any examination.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2740, Business and Professions Code.

HISTORY:

1. New section filed 3-22-82; effective thirtieth day thereafter (Register 82, No. 13).

1412. High School Education or the Equivalent.

An applicant shall provide evidence of education equivalent to completion of a high school course of study in the United States by submitting one of the following:

- (a) A high school diploma received from a U.S. high school.
- (b) A certificate of attainment of a standard of 40 or above on each of the five tests, and an average standard score of 45 or above on the entire five tests or a total of 225 on the General Education Development Examination.
- (c) A degree from any junior college, college or university accredited by a state agency authorized to accredit such institutions.
- (d) An evaluation by a high school, unified school district, junior college, college, university or board of education which the board determines, after review, establishes that an education equivalent to a high school education in the United States was obtained in this or another state or in any foreign country.
- (e) Senior matriculation in any Canadian school which the board determines, after review, establishes that an education equivalent to a high school education in the United States was obtained.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2736, Business and Professions Code.

HISTORY:

1. Amendment filed 1-27-70; effective thirtieth day thereafter (Register 70, No. 5). For prior history, see Register 66, No. 7.
2. Amendment filed 3-16-77; effective thirtieth day thereafter (Register 77, No. 12).
3. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).
4. Amendment of subsection (b) filed 4-7-87; operative 5-7-87 (Register 87, No. 16).

1413. English Comprehension.

When the board has reasonable doubt of an applicant's ability to comprehend the English language to a degree sufficient to permit him to discharge his duties as a professional nurse in this state with safety to the public, the Board shall require him to pass an examination to demonstrate such ability.

HISTORY:

1. New section filed 2-5-64; effective thirtieth day thereafter (Register 64, No. 3). For history of former Section 1413 see Register 27, No. 5.

1414. Interim Permits.

(a) An applicant whose application for licensure in California by examination has been approved will be eligible for an interim permit if the applicant has completed the educational requirements for licensure in nursing. (If the applicant is taking the examination as a graduate, the interim permit may be issued upon graduation. If the applicant is taking the examination as a non-graduate, the interim permit may be issued upon completion of the educational requirements for licensure.)

(b) An interim permit is not renewable and is in effect to the expiration date or until the results of the examination are mailed, at which time it becomes null and void.

(c) A permittee shall practice under the direct supervision of a registered nurse who shall be present and available on the patient care unit during all the time the permittee is rendering professional services. The supervising registered nurse may delegate to the permittee any function taught in the permittee's basic nursing program which, in the judgment of the supervising registered nurse, the permittee is capable of performing.

(d) An interim permittee is not authorized to use any other title or designation than "I.P." or "permittee" or "nurse permittee" or "nurse interim permittee."

(e) As an applicant for a license, the permittee is subject to the disciplinary provisions of Sections 2761 and 2762 of the Business and Professions Code as is the Registered Nurse.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2732.1, Business and Professions Code.

HISTORY:

1. New section filed 4-6-79; effective thirtieth day thereafter (Register 79, No. 14).
2. Amendment of subsection (c) filed 6-17-85; effective thirtieth day thereafter (Register 85, No. 25).
3. Amendment of subsection (c) filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).
4. Amendment of subsection (a) filed 4-7-87; operative 5-7-87 (Register 87, No. 16).
5. Amendment of subsection (a) and (b) filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

1414.1. Foreign Licensees.

An applicant who is currently licensed in a foreign country and who meets the educational requirements in Section 2736 may be issued an interim permit, subject to the conditions set forth in subsections (b), (c), (d), and (e) of Section 1414.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2732.1, 2732.15 and 2736, Business and Professions Code.

HISTORY:

1. New section filed 5-22-80; effective thirtieth day thereafter (Register 80, No. 21).
2. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1414.5. Temporary License.

(a) A person who meets the requirements of Section 2733 of the code may apply for a temporary license.

(b) An applicant whose application for a temporary license has been rejected shall be deemed to have abandoned the application if he/she does not submit evidence that he/she has removed the deficiencies specified in the written evaluation notice within a one-year period from the date of the written evaluation notice.

NOTE: Authority cited: Sections 2715 and 2733, Business and Professions Code. Reference: Section 2732.1, Business and Professions Code.

HISTORY:

1. New section filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1415. Rescoring of Examination Papers.

(Repealer filed 10-2-96; operative 1-1-96 (Register 96, No. 40).

1417. Fees.

(a) Pursuant to Sections 2815, 2815.1, 2815.7, 2815.5, 2830.7, 2831, 2833 and 2836.3 of the code, the following fees are established:

- (1) Application fee for licensure by examination.....\$75
- (2) Application fee for licensure by endorsement.....\$50
- (3) Biennial license renewal fee.....\$80
 - (a) Renewal fee—BRN.....\$75
 - (b) RN Education Fund.....\$5

administered by Office of Statewide Health Planning and Development
- (4) Penalty fee for failure to timely renew a license.....\$37
- (5) The fee for approval of a continuing education provider.....\$200
- (6) Biennial Fee for renewal of continuing education provider approval.....\$200
- (7) Penalty fee for failure to renew a continuing education provider.....\$100
- (8) Penalty fee for check returned unpaid.....\$15
- (9) Interim permit fee.....\$30
- (10) Temporary license fee.....\$30
- (11) Fee for processing endorsement papers to other states.....\$60
- (12) Certified copy of a school transcript.....\$30
- (13) Duplicate license fee.....\$30
- (14) Fee for evaluation of qualifications to use the title "nurse-practitioner".....\$75
- (15) Application fee for certificate as a nurse-midwife.....\$75
- (16) Biennial Fee for renewal of nurse-midwife certificate.....\$50
- (17) Penalty fee for failure to timely renew a nurse-midwife certificate.....\$25
- (18) Fee for application for nurse-midwife equivalency examination.....\$100
- (19) Application fee for nurse-anesthetist certificate.....\$75
- (20) Biennial nurse-anesthetist certificate renewal fee.....\$50

(21) Penalty fee for failure to timely renew a nurse-anesthetist certificate.....	\$25
(22) Application fee for drug/device furnishing number.....	\$50
(23) Biennial drug/device furnishing number renewal fee.....	\$30
(24) Penalty fee for failure to timely renew a drug/device furnishing number.....	\$15

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 163.5, 2815, 2815.5, 2815.7, 2830.7, 2831, 2833, 2836.1, 2836.2 and 2836.3, Business and Professions Code.

HISTORY:

1. Amendment of subsections (b), (c) and (g) filed 9-3-85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 36). For prior history, see Register 84, No. 42.
2. Amendment filed 4-27-87; operative 5-27-87 (Register 87, No. 19).
3. Amendment of subsections (b) and (c) filed 9-27-89; operative 9-27-89 pursuant to Government Code Section 11346.2(d) (Register 89, No. 40).
4. Amendment of subsections (a), (b), (c) and (g) filed 2-4-91; operative 7-1-91 (Register 91, No. 10).
5. Change without regulatory effect amending section filed 1-8-92 pursuant to Section 100, Title I, California Code of Regulations; operative 1-1-92 (Register 92, No. 11).

1418. Criteria for Evaluation of Equivalent Armed Services Training and Experience.

(a) Any person who has served on active duty under honorable conditions, in the medical department of any of the armed forces of the United States and who has successfully completed the courses of instruction required to achieve the following ratings:

Army-Clinical Specialist, MOS 91C20 through 91C40;

Air Force-Medical Service Technician, AFSC 90270 or Medical Service Superintendent, AFSC 90292; and

Navy-Medical Service Technician, Class C, MOS 8424 or Independent Duty Technician, MOS 8424 and who has had two years of direct patient care nursing-related experience within five years of the date of application for licensure shall be deemed to have completed equivalent nursing education.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2736.5, Business and Professions Code.

HISTORY:

1. New section filed 10-28-76; effective thirtieth day thereafter (Register 76, No. 44).
2. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1419. Renewal of License.

A renewal application shall be on the form provided by the board, accompanied by the fee specified in Section 1417(a)(3) and required information and filed with the board at its office in Sacramento.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2715 and 2811, Business and Professions Code.

HISTORY:

1. New section filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39). For history of former Section 1419, see Registers 64, No. 3, and 27, No. 5.
2. Amendment filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

1419.1. Inactive License.

A license may be maintained in an inactive status by paying the renewal fee as it becomes due. The licensee shall not practice nursing during the time the license is inactive.

To activate an inactive license, the licensee must submit a written request and evidence of 30 hours of approved continuing education taken during the two year period immediately preceding the request for activation.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2734, Business and Professions Code.

HISTORY:

1. New section filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1419.2. Renewal Processing Times.

(a) Within 60 calendar days of receipt of a renewal form from a registered nurse, the board shall inform the nurse in writing that it is either complete and accepted for processing or that it is deficient and what specific information or documentation is required to complete the renewal form.

(b) Within 60 calendar days of receipt of a completed renewal form from a registered nurse, the board shall inform the nurse in writing of the renewal decision.

(c) The board's actual time periods for processing registered nurse renewals, from the receipt of the initial renewal form to the final decision, based on the two years preceding the proposal of this section were as follows:

Minimum	9 days
Median	19 days
Maximum	107 days

NOTE: Authority cited: Section 2715, Business and Professions Code; and Section 15376, Government Code. Reference: Section 2811, Business and Professions Code; and Section 15376, Government Code.

HISTORY:

1. New section filed 2-13-91; operative 3-15-91 (Register 91, No. 12).

1419.3. Reinstatement of Expired License.

In the event a licensee does not renew his/her license as provided in Section 2811 of the code, the license expires.

(a) A licensee may renew an expired license within eight years following its expiration by paying the appropriate renewal and late fee and either

(1) Providing evidence of 30 hours of continuing education taken within the prior two-year period; or

(2) Successfully completing an examination given by the board.

(b) If eight years have passed following the expiration date of a license, a licensee shall be required to pass an examination to determine current clinical knowledge and fitness to resume the practice of professional nursing.

NOTE: Authority cited: Sections 2715 and 2811.5, Business and Professions Code. Reference: Sections 2811 and 2811.5, Business and Professions Code.

HISTORY:

1. New section filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1419.4. Issuance of Duplicate License.

A licensee shall report a lost or stolen license within ten (10) days of the loss and shall request, in writing, replacement of the lost license and pay the fee specified in Section 1417(a)(13). A licensee may be required to submit a notarized statement explaining the circumstances of the loss, and/or file a license renewal form provided by the board.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2815, Business and Professions Code.

HISTORY:

1. New section filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).
2. Amendment filed 4-7-87; operative 5-7-87 (Register 87, No. 16).
3. Amendment filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

Article 3. Schools of Nursing

1420. Definitions.

For purposes of this article, the term:

(a) "Accredited nursing program" means a school, program, department or division of nursing accredited under the provisions of Sections 2785 through 2789 of the code;

(b) "Administration" means coordinating, directing and participating in all activities involving in developing, implementing and managing a nursing program;

(c) "Clinically competent" means that a nursing program faculty member possesses and exercises the degree of learning, skill, care and experience ordinarily possessed and exercised by staff level registered nurses of the clinical unit to which the instructor is assigned;

(d) "Clinical practice" means the application of nursing knowledge and skills in clinical facilities and participation in planned learning experiences in skills labs, by students, both of which are designed to meet course objectives;

(e) "Learning experiences" means those activities planned for students by the faculty, which are designed to meet the objectives of the required course of instruction including the basic standards of competent performance;

(f) "Course of instruction" means the minimum education program prescribed by the board for eligibility to take the licensing examination;

(g) "Education program" means an organized plan of instruction;

(h) "Nursing process" means the problem solving techniques of assessment, planning, implementing and evaluating a plan of care, which requires technical and scientific knowledge and judgmental and decision-making skills;

(i) "Director" means the registered nurse faculty member who administers the program and who has the authority and responsibility for yearly fiscal planning of its resources;

(j) "Faculty" means all nurses who teach in a nursing program accredited by the board;

(k) "Non-faculty/preceptor" means all persons other than faculty members who meet the minimum qualifications of clinical teaching assistant and are selected by the nursing program to teach and/or supervise nursing students designated clinical areas;

(l) "Sponsoring hospital" means a hospital which has implemented and is supporting a nursing program;

(m) "Year" means an academic year.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2785-2788, Business and Professions Code.

HISTORY:

1. Repealer of Article 3 (Sections 1420-1435.5, not consecutive) and new Article 3 (Sections 1420-1430, not consecutive) filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39). For prior history, including former Sections 1419, 1422.2, 1422.3, 1424, 1425.5, 1426, 1427.5, 1427.6, 1429, 1430, 1433.05, 1433.1-1433.3, 1436 and 1437, see Registers 85, No. 25; 78, No. 9; 77, Nos. 47 and 34; 76, No. 47; 75, Nos. 41 and 33; 74, No. 13; 73, No. 40; 72, No. 53; 70, No. 5; 68, No. 24; 66, Nos. 37, 7 and 6; 64, No. 3; 61, Nos. 13 and 7; 60, No. 21; 57, No. 15; 55, No. 4; 54, No. 8; 53, No. 18; 27, No. 5; 26, No. 4 and 20, No. 1.

1421. Application for Accreditation.

(a) An educational institution or sponsoring hospital seeking accreditation of a new program shall:

(1) Notify the board in writing of its intent to offer a new program. Upon notification of such intent, a nursing consultant will be assigned to assist the proposed program with understanding the board's guidelines for the development of a new program.

(2) Submit a report in accordance with the board's guidelines for proposed programs.

(3) Appoint a director who meets the requirements of Section 1425(b). Such appointments shall be made upon acceptance of the plan for the proposed program.

(4) No later than six months prior to the enrollment of students, submit a formal proposal to the board demonstrating how the program will meet the requirements of Sections 1424 through 1430.

(b) A representative of the board shall conduct a survey of the proposed program and shall submit a written report to the board.

(c) The board shall consider the report at a public meeting at which representatives of the program may appear. The board may thereafter grant or deny accreditation and shall notify the program of its decision.

(d) A material misrepresentation of fact by a nursing program in any information required to be submitted to the board is grounds for denial or revocation of the program's accreditation.

NOTE: Authority cited: Sections 2715, 2786 and 2786.6, Business and Professions Code. Reference: Sections 2786 and 2786.6, Business and Professions Code.

1422. Certificate of Accreditation.

(a) A certificate of accreditation shall be issued to each nursing program when it is initially accredited by the board.

(b) A certificate of accreditation shall be returned to the board when the program's accreditation has been revoked.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1423. Accreditation Requirements.

In order for a program to be accredited by the board or to retain its accreditation, it shall comply with all requirements set forth in this article and in Sections 2786 through 2788 of the code.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1424. Administration and Organization of the Nursing Program.

(a) There shall be a written statement of philosophy and objectives which serves as a basis for curriculum structure. Such statement shall take into consideration the individual difference of students, including their cultural and ethnic background, learning styles, goals, and support systems. It shall also take into consideration the concepts of nursing and man in terms of nursing activities, the environment, the health-illness continuum, and relevant knowledge from related disciplines.

(b) The policies and procedures by which the program is administered shall be in writing, shall reflect the philosophy and objectives of the program, and shall be available to all students.

(1) The nursing program shall have a written plan for evaluation of the total program, including admission and selection procedures, attrition and retention of students, and performance of graduates in meeting community needs.

(c) There shall be an organizational chart which identifies the relationships, lines of authority and channels of communication within the program, between the program and other administrative segments of the institution with which it is affiliated, and between the program, the institution and clinical agencies.

(d) The program shall have sufficient resources, including faculty, library, staff and support services, physical space and equipment to achieve the program's objectives.

(e) A sufficient period of time shall be set aside, by the institution, exclusively for the use of the director or his or her designee in the administration of the program.

(f) The program shall have a registered nurse faculty member who is knowledgeable and current regarding the program and the policies and procedures by which it is administered and who can perform the director's duties in that person's absence.

(g) The faculty shall have the primary responsibility for developing policies and procedures, planning, organizing, implementing and evaluating all aspects of the program.

(h) The faculty shall be adequate in type and number to develop and implement the program approved by the board, and shall include at least one qualified instructor in each of the areas of nursing listed in Section 1426 who shall be responsible for the educational program in that area. Nursing

faculty members whose teaching responsibilities include subject matter directly related to the practice of nursing shall be clinically competent in the areas to which they are assigned.

(i) When non-faculty individuals participate in the instruction and supervision of students obtaining clinical experience, their responsibilities shall be described in writing and kept on file by the nursing program.

(j) The assistant director shall function under the supervision of the director. Assistant instructors and clinical teaching assistants shall function under the supervision of an instructor.

(k) The student/teacher ratio in the clinical setting shall be based on the following criteria:

- (1) acuity of patient needs;
- (2) objectives of the learning experience;
- (3) class level of the students;
- (4) geographic placement of students;
- (5) teaching methods; and
- (6) requirements established by the clinical agency.

NOTE: Authority cited: Sections 2715, 2786 and 2786.6, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

HISTORY:

1. Amendment of subsections (b) and (g) filed 4-27-87; operative 5-27-87 (Register 87, No. 18).

1425. Faculty—Qualifications and Changes.

A program shall report to the board all changes in faculty including changes in teaching areas, prior to employment of or within 30 days after termination of employment of a faculty member. Such changes shall be reported on forms provided by the board. Faculty members shall possess the following qualifications:

(a) A nurse faculty member appointed on or after the effective date of these regulations shall hold a valid, active license issued by the board.

(b) The registered nurse director of the program shall have:

(1) A Master's or higher degree from an accredited college or university which includes course work in nursing, education or administration;

(2) A minimum of one year's experience in an administrative position;

(3) A minimum of two years' experience teaching in pre- or post-licensure nursing programs;

(4) At least one year's experience as a registered nurse providing direct patient care; or

(5) Equivalent experience and/or education, as determined by the board.

(c) The registered nurse assistant director shall meet the education requirements set forth in subsection (b)(1) above and the experience requirements set forth in subsections (b)(3) and (b)(4) above or such experience as the board determines to be equivalent.

(d) An instructor shall meet the following requirements:

(1) Those set forth in subsections (b)(1) and (b)(4) above; and

(2) Completion of at least one year's experience teaching courses related to nursing or a course which includes practice in teaching nursing.

(e) An assistant instructor shall have:

(1) A baccalaureate degree from an accredited college which shall include courses in nursing, or in natural, behavioral or social sciences relevant to nursing practice;

(2) At least one year's continuous, full-time experience in direct patient care practice as a registered nurse.

(f) A clinical teaching assistant shall have had at least one year's experience, within the previous five years, as a registered nurse providing direct patient care.

NOTE: Authority cited: Section 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

HISTORY:

1. Amendment filed 3-24-86; effective thirtieth day thereafter (Register 86, No. 13).
2. Amendment of first paragraph and subsection (b)(5) filed 4-27-87; operative 5-27-87 (Register 87, No. 18).

1425.1. Faculty Responsibilities.

(a) Each faculty member shall assume responsibility and accountability for instruction, evaluation of students, and planning and implementing curriculum content.

(b) The registered nurse faculty member shall be responsible for clinical supervision only of those students enrolled in the registered nursing program.

NOTE: Authority cited: Sections 2715, 2786 and 2786.6, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

HISTORY:

1. Amendment of subsection (a) filed 4-27-87; operative 5-27-87 (Register 87, No. 18).

1426. Required Curriculum; Prior Approval.

(a) The curriculum of a nursing program shall be that set forth in this section. A program's curriculum shall not be implemented or revised until it has been approved by the board.

(b) The curriculum shall reflect a unifying theme, which includes the nursing process as defined by the faculty, and shall be designed so that a nurse who completes the program will have the knowledge and skills necessary to function in accordance with the minimum standards for competency set forth in Section 1443.5.

(c) The curriculum shall consist of not less than fifty-eight (58) semester units, or eighty-seven (87) quarter units, which shall include at least the following number of units in the specified course areas:

(1) Art and science of nursing, thirty-six (36) semester units or fifty-four (54) quarter units, of which eighteen (18) semester or twenty-seven (27) quarter units will be in theory and eighteen (18) semester or twenty-seven (27) quarter units will be in clinical practice.

(2) Communication skills, six (6) semester or nine (9) quarter units. Communication skills shall include principles of verbal, written and group communication.

(3) Related natural, behavioral, and social sciences, sixteen (16) semester or twenty-four (24) quarter units.

(d) Theory and clinical practice shall be concurrent in the following nursing areas: medical-surgical, maternal/child, mental health, psychiatric nursing and geriatrics. Instruction will be given in, but not limited to, the following: personal hygiene, human sexuality, client abuse, cultural diversity, nutrition (including therapeutic aspects), pharmacology, legal, social and ethical aspects of nursing, nursing leadership and management.

(e) The following shall be integrated throughout the entire nursing curriculum:

- (1) Nursing process;
- (2) Basic intervention skills in preventive, remedial, supportive and rehabilitative nursing;
- (3) Physical, behavioral and social aspects of human development from birth through all age levels;
- (4) The knowledge and skills required to develop collegial relationships with health care providers from other disciplines;
- (5) Communication skills including principles of verbal, written and group communications;
- (6) Natural sciences including human anatomy, physiology and microbiology; and
- (7) Related behavioral and social sciences with emphasis on societal and cultural patterns, human development, and behavior relevant to health-illness.

(f) The course of instruction shall be presented in semester or quarter units under the following formula:

(1) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(2) Three (3) hours of clinical practice each week throughout a semester or quarter equals one (1) unit.

NOTE: Authority cited: Sections 2715 and 2786.6, Business and Professions Code. Reference: Sections 2785-2788, Business and Professions Code.

HISTORY:

1. Amendment of subsection (d) filed 4-27-87; operative 5-27-87 (Register 87, No. 18).

1427. Clinical Facilities.

(a) A nursing program shall not utilize agencies and/or community facilities for clinical experience without prior approval by the board. Each program must submit evidence that it has complied with the requirements of subdivisions (b) and (c) of this section and the policies outlined by the board.

(b) A program which utilizes agencies and/or community facilities for clinical experience shall maintain written objectives for student learning in such facilities, stated in measurable performance terms, and shall assign students only to facilities which can provide the experience necessary to meet those objectives.

(c) Each such program shall maintain written agreements with such facilities and such agreements shall include the following:

(1) Assurance of the availability and appropriateness of the learning environment in relation to the program's written objectives;

- (2) Provision for orientation of faculty and students;
- (3) A specification of the responsibilities and authority of the facility's staff as related to the program and to the educational experience of the students;
- (4) Assurance that staff is adequate in number and quality to insure safe and continuous health care services to patients;
- (5) Provisions for continuing communication between the facility and the program; and
- (6) A description of the responsibilities of faculty assigned to the facility utilized by the program.

NOTE: Authority cited: Sections 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1428. Student Participation.

(a) Students shall be provided opportunity to participate with the faculty in the identification of policies and procedures related to students including but not limited to:

- (1) Philosophy and objectives;
- (2) Clinical facilities;
- (3) Learning experiences; and
- (4) Curriculum, instruction and evaluation of the various aspects of the program.

(b) The program shall have a procedure for resolving student grievances.

(c) Tools used to evaluate students' progress and performance and clinical learning experiences shall be stated in measurable terms directly related to course objectives.

NOTE: Authority cited: Sections 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

1428.6. Policies Relating to Establishing Eligibility for Examination.

(a) At least two weeks prior to its established graduation date, the nursing program shall submit to the board a roster of names of those students and their expected date to successfully complete required course work. Except as provided below such a student shall be deemed eligible to take the examination after the date on which the student successfully completed the required course work.

(b) The nursing program shall notify the board immediately by telephone or facsimile of any student who fails to maintain eligibility and such individuals shall be deemed ineligible to take the examination.

NOTE: Authority cited: Sections 2715 and 2786, Business and Professions Code. Reference: Sections 2786-2788, Business and Professions Code.

HISTORY:

1. Amendment filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

1429. Licensed Vocational Nurses.

(a) An applicant who is licensed in California as a vocational nurse is eligible to apply for licensure as a registered nurse if such applicant has successfully completed the courses prescribed below and meets all the other requirements set forth in Section 2736 of the code. Such applicant shall submit evidence to the board, including a transcript, of successful comple-

tion of the requirements set forth in subsection (c) and of successful completion or challenge of courses in physiology and microbiology comparable to such courses required for licensure as a registered nurse.

(b) The school shall offer objective counseling of this option and evaluate each licensed vocational nurse applicant for admission to its registered nursing program on an individual basis. A school's determination of the prerequisite courses required of a licensed vocational nurse applicant shall be based on an analysis of each applicant's academic deficiencies, irrespective of the time such courses were taken.

(c) The additional education required of licensed vocational nurse applicants shall not exceed a maximum of thirty (30) semester or forty-five (45) quarter units. Courses required for vocational nurse licensure do not count toward fulfillment of the additional education requirement. However, other courses comparable to those required for licensure as a registered nurse, as specified in Section 1426, may be counted toward fulfillment of the additional education requirement.

Nursing courses shall be taken in an accredited school and shall be beyond courses equivalent to the first year of professional nursing courses. The nursing content shall include nursing intervention in acute, preventive, remedial, supportive, rehabilitative and teaching aspects of nursing. Theory and courses with concurrent clinical practice shall include advanced medical-surgical, mental health, psychiatric nursing and geriatric nursing. The nursing content shall include the basic standards for competent performance prescribed in Section 1443.5 of these regulations.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2736, 2736.6 and 2786, Business and Professions Code.

1430. Change of Name or Address.

Each school holding a certificate of accreditation shall file its legal name and current mailing address with the board at its principal office and shall notify the board at said office of any change of name or address within thirty (30) days after such change. It shall give both the old and the new name or address.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2785, Business and Professions Code.

Article 3.5. Citations and Fines

1435. Citations—Content and Service

(a) The executive officer of the board or his/her designee, in lieu of filing an accusation against any licensee, may issue a citation which may contain an administrative fine and/or order of abatement against that licensee for any violation of law which would be grounds for discipline or of any regulation adopted by the board pursuant thereto.

(b) Each citation shall be in writing, and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.

(c) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation, or both.

(d) The citation shall inform the cited individual of the right to an informal citation conference concerning the matter and of the right to an administrative hearing.

(e) The citation shall be served upon the individual personally or by certified mail.

NOTE: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New Article 3.5 (Sections 1435-1435.7) and Section 1435 filed 7-12-96; operative 8-11-96 (Register 96, No. 28).

1435.1. Exceptions.

A citation shall not be issued in any of the following circumstances:

(a) The violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection.

(b) The licensee's conduct displayed a disregard for the patient and/or the patient's rights. This includes but is not limited to physical abuse; neglect; abandonment; fiduciary abuse (as defined in Article 2, Chapter 11 commencing with Section 15610 of the Welfare and Institutions Code with additional modification of the definitions to include all types of patients); or the deprivation of care or services which are necessary to avoid physical harm or mental suffering.

(c) The licensee failed to comply with any requirement of any previous citation, including any order of abatement or fine.

(d) The licensee has been previously disciplined by the board or has previously been denied a license by the board for the same or similar actions.

(e) The violation involves unprofessional conduct related to controlled substances or dangerous drugs.

(f) The violation involves unprofessional conduct related to sexual abuse, misconduct or relations with a patient.

(g) The licensee was convicted of an offense substantially related to the qualifications, functions, and duties of a registered nurse and there is insufficient evidence of rehabilitation.

NOTE: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code; Article 2, Chapter 11 commencing with Section 15610, Welfare and Institutions Code.

HISTORY:

1. New section filed 7-12-96; operative 8-11-96 (Register 96, No. 28).

1435.2. Violations and Fines

In any citation which includes a fine, the executive officer of the board or his/her designee shall assess fines for the following violations in accordance with the following schedule provided, however, in no case shall the total fines exceed \$2,500 for each investigation. The summary descriptions below are for

convenience of reference only, and do not include the complete text or all required elements of the listed statutes and regulations.

*Business and
Professions
Code Section*

	<i>Summary Description</i>	<i>Range of Fines</i>
119(a)	Displaying, permitting to be displayed or possessing an invalid or fraudulent license	\$ 100 to \$2,500
119(b)	Loaning license to or knowingly permitting the use by another	100 to 2,500
119(c)	Displaying or representing that license not issued to individual is his/her license	100 to 2,500
119(d)	Failing to surrender a suspended, revoked or canceled license	100 to 2,500
119(f)	Duplicating or reproducing license in such a way that it could be mistaken for a valid license or displaying or possessing an illegally reproduced license	100 to 2,500
125	Conspiracy with unlicensed person	1,000 to 2,500
125.6	Refusing to perform licensed activity; aiding or inciting refusal of performance by another licensee; discriminating in or restricting performance of activities because of race, color, sex, religion, ancestry, disability, marital status or national origin	1,000 to 2,500
136	Change of address; Failure to notify Board within 30 days	100 to 2,500
496	Examination security subversion or examination administration misconduct	1,000 to 2,500
498	Securing a license by fraud, deceit or knowing misrepresentation or knowingly omitting a material fact	1,000 to 2,500
499	False statement by a licensee in support of another person's license application	100 to 2,500
810	(a) Knowingly present false or fraudulent insurance claim; knowingly preparing writings with intent to use in support of such a claim	100 to 2,500
2725.1	Dispensing drugs or devices in a pharmacy; compounding drugs; dispensing controlled substances	1,000 to 2,500
2732	Practicing without an active status license	1,000 to 2,500
2732.05	Failing to ascertain status of registered nurse prior to employment	100 to 2,500
2761(a)	Unprofessional conduct	1,000 to 2,500
2761(a)(3)	Using advertising relating to nursing which violates Business and Professions Code section 17500	100 to 2,500
2761(a)(4)	Denial of licensure or discipline by another state or territory or governmental agency	100 to 2,500
2761(b)	Procuring certificate by fraud, misrepresentation or mistake	1,000 to 2,500
2761(d)	Violating or abetting the violation of the Nursing Practices Act	100 to 2,500
2761(e)	False statement on application for a certificate or license	100 to 2,500

Business and Professions Code Section

	<i>Summary Description</i>	<i>Range of Fines</i>
2761(g)	Impersonating an examination applicant	1,000 to 2,500
2761(h)	Impersonating another licensed practitioner or allowing another to use certificate or license	1,000 to 2,500
2761(i)	Assisting in the violation of the Medical Practices Act	100 to 2,500
2761(j)	Holding out as a nurse practitioner without meeting standards established by the board or holding out as being certified as a nurse anesthetist, nurse midwife or public health nurse unless certified by the board	1,000 to 2,500
2795	Unlicensed practice or indication of practice	1,000 to 2,500
27961	Illegal use of title; impersonation of a licensee	1,000 to 2,500
2797	False representation pertaining to examination or application for licensure; impersonation or aiding in the impersonation of examination applicant	1,000 to 2,500

Title 16 Code of Regulations Section

	<i>Description</i>	<i>Range of Fines</i>
1411.6	Examination Disclosure	\$ 1,000 to 2,500
1414(c)	Practicing without adequate supervision as an interim permittee; failing to provide adequate supervision of an interim permittee	1,000 to 2,500
1414(d)	Incorrect use of title while working as an interim permittee	100 to 2,500
1443.5	Failure to comply with standards of competent performance	1,000 to 2,500
1451(d)	Claiming partial credit for continuing education courses	100 to 2,500
1451(e)	Failing to retain continuing education certificates or grade slips for four years/failure to submit to board when requested	100 to 2,500
1453	Falsifying renewal application(s)	100 to 2,500
1474	Failure to follow standardized procedures guidelines	100 to 2,500

NOTE: Authority cited: Sections 125.9, 148, 2715, and 2761(d), Business and Professions Code. Reference: Sections 119, 125, 125.6, 125.9, 136, 148, 496, 498, 499, 810(a), 2725.1, 2732, 2732.05, 2761, 2795, 2796, and 2797, Business and Professions Code and Sections 1411.6, 1414(c), 1414(d), 1443.5, 1451(d), 1451(e), 1453, and 1474, Title 16, California Code of Regulations.

HISTORY:

1. New section filed 7-12-96; operative 8-11-96 (Register 96, No. 28).

1435.3. Citations for Unlicensed Individual

The executive officer of the board or his/her designee may issue citations, in accordance with Section 148 of the Code, against any individual (as defined in section 302(e) of the Code) who is performing or who has performed services for which licensure is required under the Nursing Practice Act or regulations adopted pursuant thereto. Citations issued under this section shall meet the requirements set forth in subdivisions (b), (c), (d), and (e) of Section 1435 and shall be subject to the provisions of Sections 1435.4,

1435.5 and subdivisions (a), (b), and (c) of Section 1435.6. Each citation issued under this section shall contain an order of abatement. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9, 148 and 302(e), Business and Professions Code.

HISTORY:

1. New section filed 7-12-96; operative 8-11-96 (Register 96, No. 28).

1435.4. Criteria to be Considered in Assessing a Fine or Order of Abatement

In any citation which includes a fine or order of abatement, the following factors shall be considered in determining the amount of the fine to be assessed or the terms of the order of abatement:

- (a) Gravity of the violation.
- (b) History of previous violations of the same or a similar nature.
- (c) Length of time that has passed since the date of the violation.
- (d) Consequences of the violation, including potential or actual patient harm.
- (e) The food or bad faith exhibited by the cited individual.
- (f) Evidence that the violation was willful.
- (g) The extent to which the individual cooperated with the board's investigation.
- (h) The extent to which the individual has remediated any knowledge and/or skills deficiencies which could have injured a patient.
- (i) Any other mitigating or aggravating factors.

NOTE: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 7-12-96; operative 8-11-96 (Register 96, No. 28).

1435.5. Contested Citations.

(a) In addition to requesting an administrative hearing provided for in subdivision (b)(4) of Section 125.9 of the Code, the individual may, within 14 calendar days after service of the citation, submit a written request for an informal citation conference with the executive officer or his/her designee. A request for an informal citation conference shall be deemed a request for an administrative hearing.

(b) The executive officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal citation conference with the individual cited and his/her legal counsel or authorized representative, if desired.

(c) The executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine or order of abatement, at the conclusion of the informal citation conference. A written decision stating the reasons for the decision shall be mailed to the individual and his/her legal counsel, if any, within 14 calendar days from the date of the informal citation conference. If the citation is dismissed, the request for an administrative hearing shall be

deemed withdrawn. If the citation is affirmed or modified, the individual may, in his/her discretion, withdraw the request for an administrative hearing or proceed with the administrative hearing process.

NOTE: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 7-12-96; operative 8-1-96 (Register 96, No. 28).

1435.6. Compliance with Citation/Order of Abatement

(a) Orders of abatement may be extended for good cause. If a cited individual who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, then he/she may request from the executive officer or his/her designee an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) If a citation is not contested, or if the order is appealed and the individual cited does not prevail, failure to abate the violation or to pay the assessed fine within the time allowed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay an assessed fine may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the individual cited.

(d) If a fine is not paid after a citation has become final, the fine shall be added to the cited individual's license renewal fee. A license shall not be renewed without payment of the renewal fee and fine.

NOTE: authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section filed 7-12-96; operative 8-11-96 (Register 96, No. 28).

1435.7. Notification to Other Boards and Agencies.

After a citation has become final, it shall be reported to other boards of registered nursing and other regulatory agencies.

NOTE: Authority cited: Sections 125.9, 148 and 2715, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

HISTORY:

1. New section 7-12-96; operative 8-11-96 (Register 96, No. 28).

Article 4. Grounds for Discipline, Disciplinary Proceedings and Rehabilitation

1442. Gross Negligence.

As used in Section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary

precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2761, Business and Professions Code.

HISTORY:

1. New Article 4 (Sections 1442 and 1443) filed 3-26-74; effective thirtieth day thereafter. (Register 74, No. 13). For history of former Article 4 (Sections 1442 and 1443), see Registers 57, No. 15, and 64, No. 3.
2. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
3. Amendment filed 6-17-85; effective thirtieth day thereafter (Register 85, No. 25).

1443. Incompetence.

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2761, Business and Professions Code.

HISTORY:

1. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
2. Amendment filed 6-17-85; effective thirtieth day thereafter (Register 85, No. 25).

1443.5. Standards of Competent Performance.

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

- (1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.
- (2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.
- (3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.
- (4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.
- (5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.
- (6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are

against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2725 and 2761, Business and Professions Code.

HISTORY:

1. New section filed 6-17-85; effective thirtieth day thereafter (Register 85, No. 25).

1444. Substantial Relationship Criteria.

A crime or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences present or potential unfitness of a registered nurse to perform the functions authorized by his/her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) A conviction of child abuse;
- (b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6, Division 2 of the Business and Professions Code;
- (c) Conviction as a mentally disordered sex offender;
- (d) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4035 of the code;
- (e) Conviction for assault and/or battery.

NOTE: Authority cited: Sections 481 and 2715, Business and Professions Code. Reference: Sections 480, 481, 2736, 2761 and 2762, Business and Professions Code.

HISTORY:

1. New section filed 5-14-75; effective thirtieth day thereafter (Register 75, No. 20).
2. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1445. Criteria for Rehabilitation.

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

- (5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

NOTE: Authority cited: Sections 482 and 2715, Business and Professions Code. Reference: Sections 483, 2736, 2761 and 2762, Business and Professions Code.

HISTORY:

1. New section filed 5-25-73; effective thirtieth day thereafter (Register 73, No. 21). For history of former section, see Register 70, No. 5.
2. Renumbering from Section 1411 filed 3-26-74; effective thirtieth day thereafter (Register 74, No. 13).
3. Amendment of subsections (a) and (b) and new subsection (c) filed 5-14-75; effective thirtieth day thereafter (Register 75, No. 20).
4. Amendment filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

1445.1. Petition for Reinstatement.

(a) A person may petition for reinstatement of a license under the provisions of Section 11522 of the Government Code by:

(1) Obtaining the appropriate forms from the board office in Sacramento and

(2) Submitting the required form of petition and supplementary documentation to the board at least forty-five (45) days in advance of the date on which the person desires to be heard, as directed in the written instructions which accompany the forms.

(b) The burden of proving rehabilitation is upon the petitioner. When considering a petition for reinstatement of a license, the board shall evaluate and consider evidence of rehabilitation submitted by the petitioner, using those criteria specified in Section 1445 of this article.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 11522, Government Code.

HISTORY:

1. New section filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 39).

Article 4.1. Diversion Program Guidelines

1446. Definitions.

As used in this article:

(a) "Program" means the alcohol and drug abuse and mental illness diversion program for registered nurses authorized pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2 of the Business and Professions Code.

(b) "Committee" means diversion evaluation committee consisting of the following members: Three registered nurses, one physician and one public member all of whom have expertise in the area of chemical dependency.

program may be utilized by the board in any disciplinary or criminal proceedings instituted against the participant.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2770.12, Business and Professions Code.

Article 5. Continuing Education

1450. Definitions.

(a) For purposes of this Article:

(1) "Continuing Education" means the variety of forms of learning experiences, including, but not limited to, lectures, conferences, academic studies, in service education, institutes, seminars, workshops, extension studies, and independent/home study programs undertaken by registered nurses for relicensure. These learning experiences are meant to enhance the knowledge of the registered nurse in the practice of nursing in direct and indirect patient care.

(2) "Course" means a systematic learning experience, at least one hour in length, which deals with and is designed for the acquisition of knowledge, skills, and information in direct and indirect patient care.

(3) "Content Relevant to the Practice of Nursing" means content related to the development and maintenance of current competency in the delivery of nursing care as specified in Section 1456.

(4) "Independent/Home Study Courses" means continuing education courses offered for individual study by an approved provider.

(5) "Hour" means at least fifty (50) minutes of participation in an organized learning experience;

(6) "Approved Providers" means those individuals, partnerships, corporations, associations, organizations, organized health care systems, educational institutions, or governmental agencies offering continuing education as approved by the Board.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.1, Business and Professions Code.

HISTORY:

1. New Article 5 (Sections 1450-1456) filed 10-10-75; effective thirtieth day thereafter (Register 75, No. 41).
2. Amendment filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1451. License Renewal Requirements.

(a) Pursuant to Section 2811 of the Code, each licensee shall pay the renewal fee and submit proof, satisfactory to the Board that during the preceding renewal period or preceding two years, the licensee has started and successfully completed thirty (30) hours of continuing education approved by the Board.

(b) In lieu of submitting such proof, the licensee may take and must successfully complete an examination given by the Board and designed to test current knowledge in the registered nursing field. A licensee who fails the examination must successfully complete thirty (30) hours of continuing

education approved by the Board before his/her active license can be renewed. The examination may not be repeated within any one renewal cycle.

(c) Licensees shall submit proof to the Board of successful completion of the required number of approved continuing education hours by signing a statement under penalty of perjury, indicating compliance and agreeing to supply supporting documents on request.

(d) Licensees shall not be allowed to claim partial credit for a continuing education course, however, instructors who participate in a part of an offering may receive full credit if the total offering is attended.

(e) Licensees shall keep the certificates or gradeslips from academic institutions pursuant to Section 1459(a) for four years from the date they complete approved continuing education courses and must submit such certificates or gradeslips to the Board when requested.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. Amendment filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1451.1. Expiration of Licenses.

(a) Licenses issued by the Board will expire unless renewed. To renew a license, the applicant shall submit proof, satisfactory to the Board of completion of thirty (30) hours of continuing education and shall pay the renewal fee.

(b) A licensee who participates in and successfully completes a continuing education course which overlaps a renewal period may apply the credit earned for the renewal period in which the course ends.

(c) An expired license may, within eight years of the date of expiration, be reinstated by the Board if the applicant meets the requirements of Section 2811 of the Code and is otherwise eligible to obtain a reinstatement, and if the applicant meets the requirements set forth in Section 1419.3.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2811 and 2811.5, Business and Professions Code.

HISTORY:

1. New section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

2. Amendment of subsection (c) and repealer of subsections (d) and (e) filed 4-7-87; operative 5-7-87 (Register 87, No. 16).

1451.2. Continuing Education Courses.

(a) Continuing Education course credit may be given for the following continuing education courses:

(1) Courses offered by an approved Provider as specified in Section 1454. In addition to classroom courses, courses may be designed by an approved Provider for participation in activities which include nursing practice, publishing and/or research, provided that such courses meet the requirements of Section 1456.

(2) Out of state courses which have been approved for voluntary or mandatory continuing education by Registered Nurse licensing agencies of other states and/or state nurses' associations, as well as offerings by

nationally recognized health associations and/or their regional subdivisions provided that such courses meet the requirements of Section 1456.

(3) Out of state academic courses in an accredited post-secondary institution which are related to the specific knowledge and/or technical skills required for the practice of nursing.

(4) Other courses as may be approved by the Board at its sole discretion.

*Minimum requirement is regional accreditation.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. New section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1452. Exemption from Continuing Education Requirements.

(a) During the first two years immediately following initial licensure in California or other jurisdictions, licensees shall be exempt from completion of the continuing education requirements specified in Section 1451.

(b) At the time of making application for renewal, an applicant may request exemption from continuing education requirements if:

(1) The licensee is requesting inactive status for the license; or

(2) The licensee can show evidence, satisfactory to the Board that

(A) he or she has been employed overseas for a period of one (1) year or more, or a resident overseas for a period of one (1) year or more and currently employed; or

(B) he or she is employed by a Federal Institution or Agency or one of the Military Services (USA), where that person is practicing nursing outside of the State of California on a California license, or

(C) he or she has had hardship of one or more years' duration, if

1. there is a total physical disability for one (1) year or more and verification of readiness or ability to return to work; or

2. there is a total disability of a member of the immediate family for whom licensee has total responsibility for one (1) year or more.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. Amendment filed 3-2-78; effective thirtieth day thereafter (Register 78, No. 9).

2. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1453. Falsifying Renewal Application.

A licensee who falsifies or makes a material misrepresentation of fact on a renewal application will be subject to disciplinary action as provided for in Section 2750 of the Business and Professions Code.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2761 and 2811.5, Business and Professions Code.

HISTORY:

1. Amendment filed 3-2-78; effective thirtieth day thereafter (Register 78, No. 9).

2. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1454. Approved Providers.

(a) For the purpose of this Article, the title "approved provider" can only be used when an individual, partnership, corporation, association, organization, organized health care system, educational institution or governmental agency, having committed no act which would lead to disciplinary action pursuant to Section 1459.1, has submitted a provider application on forms supplied by the Board, remitted the appropriate fee and has been issued a provider number.

(b) An individual, partnership, corporation, association, organized health care system, governmental agency, educational institution and other organizations may be issued only one provider number; provided, however, that any autonomous entity within such organization may be issued one provider number.

(c) An approved provider shall have a written and published policy, available on request, which provides information on:

- (1) refunds in cases of non-attendance
- (2) time period for return of fees
- (3) notification if course is canceled.

(d) The approved provider is required to accept full responsibility for each and every course, including, but not limited to recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor qualifications. When two or more providers co-sponsor a course, only one provider number shall be used for that course and that provider must assume full responsibility for recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor(s') qualifications.

(e) Providers may not grant partial credit for continuing education.

(f) Approved providers shall keep the following records for a period of four years in one location within the State of California, or in a place approved by the Board:

- (1) course outlines of each course given
- (2) record of time and places each course given
- (3) course instructor vitae or resumes
- (4) name and license number of registered nurses taking any approved course and a record of any certificate issued to them.

(g) Approved providers must notify the Board, within thirty (30) days, of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course(s), including name and address changes.

(h) Provider approval is non-transferable.

(i) The Board shall audit records, courses, instructors and related activities of a provider.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).
2. Amendment of subsection (a) filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

1455. Continuing Education Hours.

The Board will accept hours of approved continuing education on the following bases:

(a) Each hour of theory shall be accepted as one hour of continuing education.

(b) Each three hours in course-related clinical practice will be accepted as one hour of continuing education.

(c) Courses less than one (1) hour in duration will not be approved.

(d) One (1) CEU (continuing education unit) is equal to ten (10) continuing education contact hours.

(e) One (1) academic quarter unit is equal to ten (10) continuing education hours.

(f) One (1) academic semester unit is equal to fifteen (15) continuing education hours.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. Renumbering of former Section 1455 to Section 1456 and new section filed 3-2-78; effective thirtieth day thereafter (Register 78, No. 9).
2. Amendment filed 9-15-78; effective thirtieth day thereafter (Register 78, No. 37).
3. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1456. Continuing Education Courses.

The content of all courses of continuing education must be relevant to the practice of nursing and must:

(a) be related to the scientific knowledge and/or technical skills required for the practice of nursing, or

(b) be related to direct and/or indirect patient/client care.

(c) Learning experiences are expected to enhance the knowledge of the Registered Nurse at a level above that required for licensure. Courses related to the scientific knowledge for the practice of nursing include basic and advanced courses in the physical, social, and behavioral sciences, as well as advanced nursing in general or specialty areas. Content which includes the application of scientific knowledge to patient care in addition to advanced nursing courses may include courses in related areas, i.e., human sexuality; death, dying, and grief; foreign languages (conversational); therapeutic interpersonal relationship skills; pharmacology; and those related to specialty areas of nursing practice.

Courses in nursing administration, management, education, research, or other functional areas of nursing relating to indirect patient/client care would be acceptable.

Courses which deal with self-improvement, changes in attitude, financial gain, and those courses designed for lay people are not acceptable for meeting requirements for license renewal.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. Renumbering of Section 1455 to Section 1456 filed 3-2-78; effective thirtieth day thereafter (Register 78, No. 9).
2. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1457. Instructor Qualifications.

(a) It is the responsibility of each approved provider to use qualified instructors.

(b) Instructors teaching approved continuing education courses shall have the following minimum qualifications:

(1) The registered nurse instructor, shall

(A) hold a current valid license to practice as a registered nurse and be free from any disciplinary action by this Board, and

(B) be knowledgeable, current and skillful in the subject matter of the course as evidenced through:

1. holding a baccalaureate or higher degree from an accredited college or university and validated experience in subject matter; or

2. experience in teaching similar subject matter content within the two years preceding the course; or

3. have at least one year's experience within the last two years in the specialized area in which he/she is teaching.

(2) The non-nurse instructor, shall

(A) be currently licensed or certified in his/her area of expertise if appropriate, and

(B) show evidence of specialized training, which may include, but not be limited to a certificate of training or an advanced degree in given subject area, and

(C) have at least one year's experience within the last two years in the practice of teaching of the specialized area in which he/she teaches.

(3) Nothing in this Section exempts an individual from the legal requirements of the California Nursing Practice Act.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. Renumbering of Section 1456 to Section 1457 filed 3-2-78; effective thirtieth day thereafter (Register 78, No. 9).
2. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1458. Course Verification.

(a) Approved providers shall issue a document of proof, i.e., gradeslip, or transcript to each licensee to show that the individual has met the established criteria for successful completion of a course.

(b) A certificate or diploma documenting successful completion shall contain the following information:

(1) Name of student and registered nurse license number or other identification number.

(2) Course title.

(3) Provider name (as approved by the Board), address, and provider number.

(4) Date of course.

(5) Number of continuing education contact hours.

(6) Signature of instructor and/or provider, or provider designee.

(7) This document must be retained by the licensee for a period of four years after the course concludes.

(c) Course verification must be issued within a reasonable length of time after the completion of the course, not to exceed ninety days.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. New section filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Renumbering of Section 1457 to Section 1458 filed 3-2-78; effective thirtieth day thereafter (Register 78, No. 9).
3. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).

1459. Advertisement

Information disseminated by approved providers publicizing continuing education shall be true and not misleading and shall include the following:

1. The statement "Provider approved by the California Board of Registered Nursing, Provider Number ____ for ____ contact hours."

2. Provider's policy on refunds in cases of non-attendance by the registrant.

3. A clear, concise description of the course content and/or objectives.

4. Provider name as officially on file with the Board.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. New section filed 12-18-81; effective thirtieth day thereafter (Registered 81, No. 51).

1459.1. Withdrawal of Approval.

(a) The Board may withdraw its approval of a provider or deny a provider application for causes which include, but are not limited to, the following:

(1) Conviction of a felony or any offense substantially related to the activities of a provider.

(2) Failure to comply with any provision of Chapter 6, Division 2, of the Business and Professions Code and/or Chapter 14 of Title 16 of the California Code of Regulations.

(b) Any material misrepresentation of fact by a continuing education provider or applicant in any information required to be submitted to the Board is grounds for withdrawal of approval or denial of an application.

(c) The board may withdraw its approval of a provider after giving the provider written notice setting forth its reason for withdrawal and after affording a reasonable opportunity to be heard by the board or its designee after thirty (30) days written notice of the specific charges to be heard.

(d) Should the BRN deny the provider approval, applicant has the opportunity to formally appeal the action to the Board within a thirty (30) day period.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code.

HISTORY:

1. New section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51).
2. Amendment of subsection (c) filed 3-23-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 12).
3. Amendment of subsection (a)(2) filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

Article 6. Nurse-Midwives

1460. Qualifications for Certification.

(a) Initial certification.

(1) An applicant for certification to practice midwifery must meet the following conditions:

(A) Be licensed as a registered nurse under the Nursing Practice Act, Business and Professions Code, Section 2700, et seq. , and

(B) Be a graduate of a Board approved program in nurse-midwifery.

(2) Equivalency. A registered nurse applicant not meeting the above requirements shall be eligible for certification, providing one of the following conditions exists:

(A) A graduate of a nurse-midwifery program not meeting Board of Registered Nursing standards who shows evidence satisfactory to the Board that deficiencies have been corrected in a Board approved nurse-midwifery program, or have been corrected through successful completion of specific courses which have been approved by the Board.

(B) Certification as a nurse-midwife by a national or state organization whose standards are satisfactory to the Board.

(C) An applicant who has successfully challenged the curriculum of the Nurse-Midwifery educational program which meets the standards of the Board of Registered Nursing and demonstrates clinical competency in management of normal labor and delivery as specified in Section 1462(4)(b); such demonstration of clinical competency shall consist of verification, satisfactory to the Board, by a certified nurse-midwife and by a physician, as specified in Section 1462(c)(2).

(D) A registered nurse whose post-licensure training and practice in maternal and child care partially fulfills requirements for certification, and

1. Remediates the deficiencies in a Board approved nurse-midwife program, or

2. Has successfully completed an examination satisfactory to the Board and demonstrates clinical competency in management of normal labor and delivery as specified in Section 1462(4)(b); such demonstration of clinical competency shall consist of verification, satisfactory to the Board, by a certified nurse-midwife and by a physician, as specified in Section 1462(c)(2).

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2746, 2746.2, 2746.5, Business and Professions Code.

HISTORY:

1. New Article 6 (S1460-1465, not consecutive) filed 10-10-75; effective thirtieth day thereafter (Register 75, No. 41).
2. New subsections (b) and (c) filed 1-9-76; effective thirtieth day thereafter (Register 76, No. 2).
3. Repealer and new section filed 4-7-79; effective thirtieth day thereafter (Register 79, No. 14).
4. Amendment of subsection (a)(2)(A) filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).

1461. Nurse-Midwifery Committee.

The board shall appoint a committee comprised of at least one nurse-midwife and one physician, who have demonstrated familiarity with consumer needs, collegial practice and accompanied liability, and related educational standards in the delivery of maternal-child health care. This committee shall also include at least one public member and may include such other members as the board deems appropriate. The purpose of this committee is to advise the board on all matters pertaining to nurse-midwifery as established by the board, and, if necessary, to assist the board or its designated representatives in the evaluation of applications for nurse-midwifery certification.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2746.2, Business and Professions Code.

HISTORY:

1. Renumbering from Section 1461 to Section 1466 filed 4-6-79; effective thirtieth day thereafter (Register 79, No. 14).
2. New section filed 4-6-79; effective thirtieth day thereafter (Register 79, No. 14).
3. Amendment filed 12-4-85; effective thirtieth day thereafter (Register 85, No. 49).

1462. Standards for Nurse-Midwifery Programs.

(a) Program of study. The program of study preparing a nurse-midwife shall:

- (1) Have as its primary purpose the preparation of nurse-midwives;
- (2) Have its philosophy clearly defined and available in written form;
- (3) Have its objectives, reflective of the philosophy, stated in behavioral terms, which describe the theoretical knowledge base and clinical competencies expected of the graduates.

(b) Curriculum.

(1) The curriculum shall be no less than twelve(12) months in length, and shall be specifically designed to provide a knowledge and skills base necessary for nurse-midwifery management of women and neonates. Such content shall include, but not be limited to, the following:

(A) Anatomy; physiology; genetics; obstetrics and gynecology; embryology and fetal development; neonatology; child growth and development; pharmacology; nutrition; laboratory and diagnostic tests and procedures; and physical assessment.

(B) Concepts in psycho-social, emotional, and cultural aspects of maternal/child care; human sexuality; counseling and teaching; maternal/infant/family bonding process; breast feeding; family planning; principles of preventive health; and community health.

(C) All aspects of the management of normal pregnancy, labor and delivery, postpartum period, newborn care, family planning and/or routine gynecological care in alternative birth centers, homes and hospitals.

(2) The program shall provide concurrent theory and clinical practice in a setting in the United States.

(3) The program shall include the nurse-midwifery management process which includes the following steps:

(A) Obtains or updates a defined and relevant data base for assessment of the health status of the client.

(B) Identifies problems/diagnosis based upon correct interpretation of the data base.

(C) Prepares a defined needs/problem list with corroboration from the client.

(D) Consults and collaborates with and refers to, appropriate members of the health care team.

(E) Provides information to enable clients to make appropriate decisions and to assume appropriate responsibility for their own health.

(F) Assumes direct responsibility for the development of comprehensive, supportive care for the client and with the client.

(G) Assumes direct responsibility for implementing the plan of care.

(H) Initiates appropriate measures for obstetrical and neonatal emergencies.

(I) Evaluates, with corroboration from the client, the achievement of health care goals and modifies plan of care appropriately.

(4) The program shall prepare the nurse-midwife to practice as follows:

(A) Management of the normal pregnancy.

(B) Management of normal labor and delivery in all birth settings, including the following when indicated:

1. Administration of intravenous fluids, analgesics, and postpartum oxytocics.

2. Amniotome during labor.

3. Application of external or internal monitoring devices.

4. Administration of local anesthesia: paracervical blocks, pudendal blocks, and local infiltration.

5. Episiotomy.

6. Repair of episiotomies and lacerations.

7. Resuscitation of the newborn.

(C) Management of the normal postpartum period.

(D) Management of the normal newborn care.

(E) Management of family planning and/or routine gynecological care including: fitting vaginal diaphragms, insertion of intrauterine devices, selection of contraceptive agents from approved formulary.

(c) Faculty. Faculty of the nurse-midwifery educational program shall comply with the following requirements:

(1) Faculty shall include one or more nurse-midwives and one or more physicians with current training and practice in obstetrics.

(2) Faculty teaching in the program shall be current in knowledge and practice in the specialty being taught.

(3) Nurse-midwives, clinical instructors, and physicians who participate in teaching, supervising and evaluating students shall show evidence of current practice.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2746, 2746.2 and 2746.5, Business and Professions Code.

HISTORY:

1. New section filed 4-6-79; effective thirtieth day thereafter (Register 79, No. 14).

2. Amendment filed 12-4-85; effective thirtieth day thereafter (Register 85, No. 49).

1463. Scope of Practice.

The scope of nurse-midwifery practice includes:

(a) Providing necessary supervision, care and advice in a variety of settings to women during the antepartal, intrapartal, postpartal, interconceptional periods, and family planning needs.

(b) Conducting deliveries on his or her own responsibility and caring for the newborn and the infant. This care includes preventive measures and the detection of abnormal conditions in mother and child.

(c) Obtaining physician assistance and consultation when indicated.

(d) Providing emergency care until physician assistance can be obtained.

(e) Other practices and procedures may be included when the nurse-midwife and the supervising physician deem appropriate by using the standardized procedures as specified in Section 2725 of the Code.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2746, 2746.2 and 2746.5, Business and Professions Code.

HISTORY:

1. New section filed 4-6-79; effective thirtieth day thereafter (Register 79, No. 14).

2. Editorial correction to subsection designations (Register 79, No. 14).

3. Amendment of subsection (e) and repealer of subsection (f) filed 12-4-85; effective thirtieth day thereafter (Register 85, No. 49).

1466. Renewal of Certificates.

Certificates to practice nurse-midwifery may be renewed biennially by application for renewal on a form provided by the board and payment of the renewal fee.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2815.5, Business and Professions Code.

HISTORY:

1. Renumbering from Section 1461 to Section 1466 filed 4-6-79; effective thirtieth day thereafter (Register 79, No. 14).

2. Amendment filed 12-4-85; effective thirtieth day thereafter (Register 85, No. 49).

Article 7. Standardized Procedure Guidelines

1470. Purpose.

The Board of Registered Nursing in conjunction with the Medical Board of California (see the regulations of the Medical Board of California, Article 9.5, Chapter 13, Title 16 of the California Code of Regulations) intends, by adopting the regulations contained in the article, to jointly promulgate

guidelines for the development of standardized procedures to be used in organized health care systems which are subject to this rule. The purpose of these guidelines is:

(a) To protect consumers by providing evidence that the nurse meets all requirements to practice safely.

(b) To provide uniformity in development of standardized procedures.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2725 and 2811.5, Business and Professions Code.

HISTORY:

1. New Article 7 (Sections 1470-1474, inclusive) filed 9-8-76; effective thirtieth day thereafter (Register 76, No. 37).
2. Amendment filed 6-17-85; effective thirtieth day thereafter (Register 85, No. 25).
3. Amendment of first paragraph filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

1471. Definitions.

For purposes of this article:

(a) "Standardized procedure functions" means those functions specified in Business and Professions Code Section 2725(c) and (d) which are to be performed according to "standardized procedures";

(b) "Organized health care system" means a health facility which is not licensed pursuant to Chapter 2 (commencing with Section 1250), Division 2 of the Health and Safety Code and includes, but is not limited to, clinics, home health agencies, physicians' offices and public or community health services;

(c) "Standardized procedures" means policies and protocols formulated by organized health care systems for the performance of standardized procedure functions.

1472. Standardized Procedure Functions.

An organized health care system must develop standardized procedures before permitting registered nurses to perform standardized procedure functions. A registered nurse may perform standardized procedure functions only under the conditions specified in a health care system's standardized procedures; and must provide the system with satisfactory evidence that the nurse meets its experience, training, and/or education requirements to perform such functions.

1474. Standardized Procedure Guidelines.

Following are the standardized procedure guidelines jointly promulgated by the Medical Board of California and by the Board of Registered Nursing:

(a) Standardized procedures shall include a written description of the method used in developing and approving them and any revision thereof.

(b) Each standardized procedure shall:

(1) Be in writing, dated and signed by the organized health care system personnel authorized to approve it.

(2) Specify which standardized procedure functions registered nurses may perform and under what circumstances.

(3) State any specific requirements which are to be followed by registered nurses in performing particular standardized procedure functions.

(4) Specify any experience, training, and/or education requirements for performance of standardized procedure functions.

(5) Establish a method for initial and continuing evaluation of the competence of those registered nurses authorized to perform standardized procedure functions.

(6) Provide for a method of maintaining a written record of those persons authorized to perform standardized procedure functions.

(7) Specify the scope of supervision required for performance of standardized procedure functions, for example, immediate supervision by a physician.

(8) Set forth any specialized circumstances under which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition.

(9) State the limitations on settings, if any, in which standardized procedure functions may be performed.

(10) Specify patient record keeping requirements.

(11) Provide for a method of periodic review of the standardized procedures.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2725, Business and Professions Code.

HISTORY:

1. Amendment of first paragraph and new Note filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

Article 8. Standards for Nurse Practitioners

1480. Definitions.

(a) "Nurse practitioner" means a registered nurse who possesses additional preparation and skills in physical diagnosis, psycho-social assessment, and management of health-illness needs in primary health care, and who has been prepared in a program conforms to board standards as specified in Section 1484.

(b) "Primary health care" is that which occurs when a consumer makes contact with a health care provider who assumes responsibility and accountability for the continuity of health care regardless of the presence or absence of disease.

(c) "Clinically competent" means that one possesses and exercises the degree of learning, skill, care and experience ordinarily possessed and exercised by a member of the appropriate discipline in clinical practice.

(d) "Holding oneself out" means to use the title of nurse-practitioner.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2834, Business and Professions Code.

HISTORY:

1. New Article 8 (Sections 1480-1485) filed 7-13-79; effective thirtieth day thereafter (Register 79, No. 28).

2. Amendment filed 12-7-85; effective thirtieth day thereafter (Register 85, No. 49).

1481. Categories of Nurse Practitioners.

A registered nurse who has met the requirements of Section 1482 for holding out as a nurse practitioner, may be known as a nurse practitioner and may place the letters "R.N., N.P." after his/her name alone or in combination with other letters or words identifying categories of specialization, including but not limited to the following: adult nurse practitioner, pediatric nurse practitioner, obstetrical-gynecological nurse practitioner, and family nurse practitioner.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2834 and 2836, Business and Professions Code.

HISTORY:

1. Amendment filed 12-4-85; effective thirtieth day thereafter (Register 85, No. 49).

1482. Requirements for Holding Out As a Nurse Practitioner.

The requirements for holding oneself out as a nurse practitioner are:

- (a) Active licensure as a registered nurse in California; and
- (b) One of the following:

- (1) Successful completion of a program of study which conforms to board standards; or

- (2) Certification by a national or state organization whose standards are equivalent to those set forth in Section 1484; or

- (3) A nurse who has not completed a nurse practitioner program of study which meets board standards as specified in Section 1484, shall be able to provide:

- (A) Documentation of remediation of areas of deficiency in course content and/or clinical experience, and

- (B) Verification by a nurse practitioner and by a physician who meet the requirements for faculty members specified in Section 1484(c), of clinical competence in the delivery of primary health care.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2835 and 2836, Business and Professions Code.

HISTORY:

1. Amendment filed 12-4-85; effective thirtieth day thereafter (Register 85, No. 49).

1483. Evaluation of Credentials.

An application for evaluation of a registered nurse's qualifications to hold out as a nurse practitioner shall be filed with the board on a form prescribed by the board and shall be accompanied by the fee prescribed in Section 1417 and such evidence, statements or documents as therein required by the board to conform with Sections 1482 and 1484.

The board shall notify the applicant in writing that the application is complete and accepted for filing or that the application is deficient and what specific information is required within 30 days from the receipt of an application. A decision on the evaluation of credentials shall be reached within 60 days from the filing of a completed application. The median, minimum, and maximum times for processing an application, from the receipt of the initial application to the final decision, shall be 42 days, 14

days, and one year, respectively, taking into account Section 1410.4(e) which provides for abandonment of incomplete applications after one year.

NOTE: Authority cited: Section 2715 and 2718, Business and Professions Code. Reference: Sections 2815 and 2835.5, Business and Professions Code.

HISTORY:

1. Repealer and new section filed 8-21-86; effective thirtieth day (Register 86, No. 34).

1484. Standards of Education.

The program of study preparing a nurse practitioner shall meet the following criteria:

(a) Purpose, Philosophy and Objectives

(1) have as its primary purpose the preparation of registered nurses who can provide primary health care;

(2) have a clearly defined philosophy available in written form;

(3) have objectives which reflect the philosophy, stated in behavioral terms, describing the theoretical knowledge and clinical competencies of the graduate.

(b) Administration

(1) Be conducted in conjunction with one of the following:

(A) An institution of higher education that offers a baccalaureate or higher degree in nursing, medicine, or public health.

(B) A general acute care hospital licensed pursuant to Chapter 2 (Section 1250) of Division 2 of the Health and Safety Code, which has an organized outpatient department.

(2) Have admission requirements and policies for withdrawal, dismissal and readmission clearly stated and available to the student in written form.

(3) Have written policies for clearly informing applicants of the academic status of the program.

(4) Provide the graduate with official evidence indicating that he/she has demonstrated clinical competence in delivering primary health care and has achieved all other objectives of the program.

(5) Maintain systematic, retrievable records of the program including philosophy, objectives, administration, faculty, curriculum, students and graduates. In case of program discontinuance, the board shall be notified of the method provided for record retrieval.

(6) Provide for program evaluation by faculty and students during and following the program and make results available for public review.

(c) Faculty. There shall be an adequate number of qualified faculty to develop and implement the program and to achieve the stated objectives.

(1) Each faculty person shall demonstrate current competence in the area in which he/she teaches.

(2) The director or co-director of the program shall:

(A) be a registered nurse;

(B) hold a Master's or higher degree in nursing or a related health field from an accredited college or university;

(C) have had one academic year's experience, within the last five (5) years, as an instructor in a school of professional nursing, or in a program preparing nurse practitioners.

(3) Faculty in the theoretical portion of the program must include instructors who hold a Master's or higher degree in the area in which he or she teaches.

(4) A clinical instructor shall hold active licensure to practice his/her respective profession and demonstrate current clinical competence.

(5) A clinical instructor shall participate in teaching, supervising and evaluating students, and shall be appropriately matched with the content and skills being taught to the students.

(d) Curriculum

(1) The program shall include all theoretical and clinical instruction necessary to enable the graduate to provide primary health care for persons for whom he/she will provide care.

(2) The program shall provide evaluation of previous education and/or experience in primary health care for the purpose of granting credit for meeting program requirements.

(3) Training for practice in an area of specialization shall be broad enough, not only to detect and control presenting symptoms, but to minimize the potential for disease progression.

(4) Curriculum, course content, and plans for clinical experience shall be developed through collaboration of the total faculty.

(5) Curriculum, course content, methods of instruction and clinical experience shall be consistent with the philosophy and objectives of the program.

(6) Outlines and descriptions of all learning experiences shall be available, in writing, prior to enrollment of students in the program.

(7) The program may be full-time or part-time and shall be comprised of not less than thirty (30) semester units, (forty-five (45) quarter units), which shall include theory and supervised clinical practice.

(8) The course of instruction shall be calculated according to the following formula:

(A) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(B) Three (3) hours of clinical practice each week throughout a semester or quarter equals one (1) unit.

(C) One (1) semester equals 16-18 weeks and one (1) quarter equals 10-12 weeks.

(9) Supervised clinical practice shall consist of two phases:

(A) Concurrent with theory, there shall be provided for the student, demonstration of and supervised practice of correlated skills in the clinical setting with patients.

(B) Following acquisition of basic theoretical knowledge prescribed by the curriculum the student shall receive supervised experience and instruction in an appropriate clinical setting.

(C) At least 12 semester units or 18 quarter units of the program shall be in clinical practice.

(10) The duration of clinical experience and the setting shall be such that the student will receive intensive experience in performing the diagnostic and treatment procedures essential to the practice for which the student is being prepared.

(11) The program shall have the responsibility for arranging for clinical instruction and supervision for the student.

(12) The curriculum shall include, but is not limited to:

- (A) Normal growth and development
- (B) Pathophysiology
- (C) Interviewing and communication skills
- (D) Eliciting, recording and maintaining a developmental health history
- (E) Comprehensive physical examination
- (F) Psycho-social assessment
- (G) Interpretation of laboratory findings
- (H) Evaluation of assessment data to define health and developmental problems
- (I) Pharmacology
- (J) Nutrition
- (K) Disease management
- (L) Principles of health maintenance
- (M) Assessment of community resources
- (N) Initiating and providing emergency treatments
- (O) Nurse practitioner role development
- (P) Legal implications of advanced practice
- (Q) Health care delivery systems

(13) The course of instruction of a program conducted in a non-academic setting shall be equivalent to that conducted in an academic setting.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2836, Business and Professions Code.

1485. Scope of Practice.

Nothing in this article shall be construed to limit the current scope of practice of the registered nurse authorized pursuant to the Business and Professions Code, Division 2, Chapter 6. The nurse practitioner shall function within the scope of practice as specified in the Nursing Practice Act and as it applies to all registered nurses.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2834 and 2837, Business and Professions Code.

HISTORY:

1. Amendment filed 12-4-85; effective thirtieth day thereafter (Register 85, No. 49).

Article 9. Public Health Nurse

1490. Public Health Nurse Certificate.

(a) A Public Health Nurse Certificate shall be issued by the Board to a person who:

- (1) Completes and submits an application pursuant to Section 1492; and
- (2) Meets the qualifications and requirements specified in Section 1491.

(b) A Public Health Nurse Certificate shall remain valid as long as the person's license to practice as a registered nurse in California is active.

(c) The Board may issue a duplicate certificate to a person who states in writing that his or her certificate has been lost, stolen or destroyed.

NOTE: Authority cited: Sections 600 and 602, Health and Safety Code; and Section 2816, Business and Professions Code. Reference: Sections 600 and 602, Health and Safety Code; and Section 2816, Business and Professions Code.

HISTORY:

1. Amendment filed 12-8-45 (Register 3).
2. Amendment filed 9-24-51 designated to be effective 1-1-54 (Register 25, No. 6).
3. Amendment filed 12-18-61; effective thirtieth day thereafter (Register 61, No. 26).
4. Repealer of subsection (c) filed 6-9-67; effective thirtieth day thereafter (Register 67, No. 22).
5. Repealer of subsection (d) filed 4-14-72; effective thirtieth day thereafter (Register 72, No. 16).
6. Amendment filed 3-9-87; effective thirtieth day thereafter (Register 87, No. 11).
7. New Article 9 and renumbering of former Title 17, Section 4500 to new Title 16, Section 1490, and amendment of subsections (a)-(a)(2) and (c) and Note filed 1-26-96; operative 2-28-96. Submitted to OAL for printing only (Register 96, No. 5).

1491. Qualifications and Requirements.

(a) An applicant for a Public Health Nursing Certificate shall have a license, in active status, to practice as a registered nurse in California and shall have met the education and training requirements as follows:

(1) Possession of a baccalaureate degree in nursing from a nursing school accredited by the National League for Nursing. This baccalaureate program must have included coursework in public health nursing; or

(2) Possession of a baccalaureate degree from a nursing school which is not accredited by the National League for Nursing if the Board or its authorized representative-an authorized representative shall be a specialized program in public health nursing associated with a baccalaureate school of nursing accredited by the National League for Nursing-determines that the nursing school coursework and experience is equivalent to that of a nursing school accredited by the National League for Nursing, or

(3) Possession of a baccalaureate degree in a field other than nursing and completion of a specialized public health nursing program associated with a baccalaureate school of nursing accredited by the National League for Nursing.

(4) Training in the detection, prevention, reporting requirements and treatment of child neglect and abuse which shall be at least 7 hours in length and shall include but not be limited to the following:

- (A) Prevention techniques.
- (B) Early detection techniques.
- (C) Reporting requirements.
- (D) Intervention techniques.

(b) Training in child neglect and abuse shall be acquired through:

- (1) A baccalaureate or specialized program in nursing; or
- (2) A course of instruction in the prevention, detection, reporting requirements and treatment of child neglect and abuse that covers the subject

matter specified in this section and is approved for continuing education credits by the Board of Registered Nursing.

NOTE: Authority cited: Sections 600 and 602, Health and Safety Code; and Section 2816, Business and Professions Code. Reference: Sections 600 and 602, Health and Safety Code; and Section 2816, Business and Professions Code.

HISTORY:

1. New section filed 4-14-72; effective thirtieth day thereafter (Register 72, No. 16).
2. Amendment filed 3-9-87; effective thirtieth day thereafter (Register 87, No. 11).
3. Editorial correction of subsection (a)(2) (Register 90, No. 35).
4. Renumbering and amendment of former Title 17, Section 4501 to new Title 16, Section 1491 and amendment of Note filed 1-26-96; operative 2-28-96. Submitted to OAL for printing only (Register 96, No. 5).

1492. Application for Public Health Nurse Certificate.

(a) A person seeking a Public Health Nurse Certificate shall complete and submit an application on the forms prescribed by the Board and shall submit a nonrefundable fee of thirty-five dollars (\$35) to the Board of Registered Nursing.

(b) The application fee shall be submitted by check or money order. A fee submitted by any other means will not be accepted.

(c) Receipt of an application or information, documents, or fees supporting an application shall be deemed to occur on the date the application, information, documents, or fees are received by the Board.

(d) An application shall be considered complete when all required documents, information, and fees have been received by the Board.

(e) The application form prescribed by the Board shall require the applicant to sign a statement which certifies under penalty of perjury pursuant to the laws of the State of California that the information contained in the application is true and correct.

(f) The application fee will be returned whether or not the certificate is granted after the receipt of a complete application, if:

- (1) The Board fails to notify an applicant of its decision regarding a completed application within 21 days;
- (2) The applicant appeals the delay pursuant to Section 1494, and
- (3) The Board decides the appeal in favor of the applicant.

NOTE: Authority cited: Section 2816, Business and Professions Code. Reference: Section 604, Health and Safety Code; and Section 2015.5, Code of Civil Procedure.

HISTORY:

1. New section filed 3-9-87; effective thirtieth day thereafter (Register 87, No. 11).
2. Renumbering and amendment of former Title 17, Section 4502 to new Title 16, Section 1492 and amendment of Note filed 1-26-96; operative 2-28-96. Submitted to OAL for printing only (Register 96, No. 5).

1493. Issuance of Application.

(a) The Board shall provide written notification to the applicant within 21 calendar days of receipt of an application for a Public Health Nurse Certificate that:

- (1) The application is complete and accepted for processing; or
- (2) The application is deficient and what specific information, documentation, or fee is required to complete the application.

(b) The Board's time periods for processing an initial application for Public Health Nurse Certificate are as follows:

- (1) The median time for processing an initial application is 40 calendar days.
- (2) The minimum time for processing and initial application is 3 calendar days.
- (3) The maximum time for processing an initial application is 335 calendar days.

(c) Written notification by the Board shall be deemed to have occurred on the date such notification is deposited in the U.S. mail.

(d) If an applicant fails to respond within 90 calendar days to a written request by the Board for additional information, documentation, or fees, an application shall be deemed to have been withdrawn by the applicant.

(e) An applicant whose application was deemed withdrawn pursuant to subdivision (d) may reapply by submitting a complete new application and fee.

NOTE: Authority cited: Section 15376, Government Code. Reference: Section 15376, Government Code; and Section 1013(a), Code of Civil Procedure.

HISTORY:

1. New section filed 3-9-87; effective thirtieth day thereafter (Register 87, No. 11).
2. Renumbering and amendment of former Title 17, Section 4503 to new Title 16, Section 1493 and amendment of Note filed 1-26-96; operative 2-28-96. Submitted to OAL for printing only (Register 96, No. 5).

1494. Appeal Process.

(a) If the Board fails to notify an applicant of its decision to issue or not issue a Public Health Nurse Certificate within 21 calendar days after the Board had provided a written notice to the applicant that it has received a complete application, the applicant may appeal by notifying the Board in writing. The written appeal shall include:

- (1) The name, address and telephone number of the applicant;
- (2) The title of the license or permit which is the subject of the application;
- (3) The date upon which the application was submitted;
- (4) The name of the office to which the application was submitted;
- (5) A copy of any correspondence between the Board and the applicant regarding the application; and;
- (6) Any other information which the applicant wishes to submit regarding the timeliness of the Board's consideration of the application.

(b) An appeal pursuant to this section may not be filed sooner than 30 calendar days nor later than 180 calendar days after the Board has received a completed application.

(c) The Board shall ascertain whether it has taken more than the maximum 21 calendar days after the submission of a completed application to notify an applicant of its decision to issue or not issue a certificate, and if so, whether there is good cause for exceeding the maximum time period as defined in Section 15376(h) of the Government Code.

(d) Within 14 calendar days of the Board's receipt of an appeal filed pursuant to this Section, the Board shall provide the applicant with written notification of its decision on the appeal.

(e) Nothing in Section 1490 through 1494 shall be construed to require the Board to issue a certificate.

NOTE: Authority cited: Section 15378, Government Code. Reference: Section 15376 and 15378, Government Code.

HISTORY:

1. New section filed 3-9-87; effective thirtieth day thereafter (Register 87, No. 11).
2. Renumbering and amendment of former Title 17, Section 4504 to new Title 16, Section 1494 and amendment of Note filed 1-26-96; operative 2-28-96. Submitted to OAL for printing only (Register 96, No. 5).

BUSINESS AND PROFESSIONS CODE

GENERAL PROVISIONS

7.5. Conviction Defined

A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(Added by Stats. 1979, c. 876, p. 3057, § 1.)

12.5. Authority to Issue Citation for Violation of Code to Include Authority to Issue Citation for Violation of Regulation

Whenever in any provision of this code authority is granted to issue a citation for a violation of any provision of this code, that authority also includes the authority to issue a citation for the violation of any regulation adopted pursuant to any provision of this code.

(Added by Stats. 1986, c. 1379, § 1.)

14.1. Man or Men as Person or Persons

The Legislature hereby declares its intent that the terms "man" or "men" where appropriate shall be deemed "person" or "persons" and any references to the terms "man" or "men" in sections of this code be changed to "person" or "persons" when such code sections are being amended for any purpose. This act is declaratory and not amendatory of existing law.

22. Board

"Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(Amended by Stats. 1991, c. 654 (AB 1893), § 1.)

23.6. Appointing Power

"Appointing power," unless otherwise defined, refers to the Director of Consumer Affairs.

29.5. Compliance with Support Orders; License Qualifications

In addition to other qualifications for licensure prescribed by the various acts of boards under the department, applicants for licensure and licensees renewing their licenses shall also comply with Section 11350.6 of the Welfare and Institutions Code.

(Added by Stats. 1991, c. 542 (SB 1161), § 1.)

30. Tax Enforcement; Furnishing of Federal Employer Identification Number, Social Security Number and Other Information; Penalty; Filing Reported Information; Confidentiality; Legislative Intent

(a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance or renewal of the license require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19276 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19276 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

- (1) Name.
- (2) Address or addresses of record.
- (3) Federal employer identification number if the entity is a partnership or social security number for all others.
- (4) Type of license.
- (5) Effective date of license or renewal.
- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or renewal.
- (e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(Amended by Stats. 1991, c. 542 (SB 1161), § 2; Stats. 1991, c. 654 (AB 1893), § 1.5.; Stats. 1994, c. 1135 (AB 3302), § 1.)

31. Licensees Not in Compliance with a Judgment or Order for Support; Enforcement of Obligation

(a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 11350.6 of the Welfare and Institutions Code.

(c) "Compliance with a judgment or order for support," has the meaning given in paragraph (4) of subdivision (a) of Section 11350.6 of the Welfare and Institutions Code.

(Added by Stats. 1991, c. 110 (SB 101), § 3. Amended by Stats. 1991, c. 542 (SB 1161), § 3.)

32. Legislative Findings; AIDS Training in continuing Education Requirements for Specified Licensees

(a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune

deficiency syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered nurses, licensed vocational nurses, psychologists, physician assistants, respiratory therapists, acupuncturists, marriage, family, and child counselors, licensed educational psychologists, and clinical social workers.

(Added by Stats. 1988, c. 1213. Amended by Stats. 1994, c. 26 (AB 1807), § 2, eff. March 30, 1994.)

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 1. THE DEPARTMENT

100. Existence of Department

There is in the state government, in the State and Consumer Services Agency, a Department of Consumer Affairs.

101.1. Review of Consumer-Related Boards and Categories of Licensed Professionals; Inoperative and Repealed Boards; Responsibilities and Jurisdiction

(a) It is the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review every four years to evaluate and determine whether each board has demonstrated a public need for the continued existence of that board in accordance with enumerated factors and standards as set forth in Division 1.2 (commencing with Section 473).

(b)(1) In the event that any board, as defined in Section 477, becomes inoperative and is repealed in accordance with the act that added this section, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction of that board and its executive officer.

(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department.

(3) Notwithstanding Section 107, any provision of law authorizing the appointment of an executive officer by a board subject to the review described in Division 1.2 (commencing with Section 473), or prescribing his or her duties, shall not be implemented and shall have no force or effect while the applicable board is inoperative or repealed. Any reference to the

executive officer of an inoperative or repealed board shall be deemed to be a reference to the director or his or her designee.

(c) It is the intent of the Legislature that subsequent legislation to extend or repeal the inoperative date for any board shall be a separate bill for that purpose.

(Added by Stats. 1994, c. 908 (SB 2036), § 2.)

101.6. Purpose of Boards, Bureaus and Commissions; General Duties and Powers

The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California.

To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

(Added by Stats. 1980, c. 375, p. 748, § 1.)

103. Compensation and Expenses of Board, Commission or Committee Members

Each member of a board, commission, or committee created in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards,

commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

(Amended by Stats. 1993, c. 1264 (SB 574), § 1.)

105.5. Duration of Appointment to Fill Vacancy

Notwithstanding any other provision of this code, each member of a board, commission, examining committee, or other similarly constituted agency within the department shall hold office until the appointment and qualification of his successor or until one year shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

106. Removal of Board Members

The Governor has power to remove from office at any time, any member of any board appointed by him for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the Governor, conferred on him by any other provision of law, to remove any member of any board.

106.5. Removal of Board Members; Disclosure of Examination Questions; Law Governing

Notwithstanding any other provision of law, the Governor may remove from office a member of a board or other licensing entity in the department if it is shown that such member has knowledge of the specific questions to be asked on the licensing entity's next examination and directly or indirectly discloses any such question or questions in advance of or during the examination to any applicant for that examination.

The proceedings for removal shall be conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the Governor shall have all the powers granted therein.

107. Appointment of Executive Officer

Pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution, each board may appoint a person exempt from civil service and may fix his or her salary, with the approval of the Department of Personnel Administration pursuant to Section 19825 of the Government Code, who shall be designated as an executive officer unless the licensing act of the particular board designates the person as a registrar.

(Amended by Stats. 1987, c. 850, § 2.)

107.5. Official Seal; Form and Contents

If any board in the department uses an official seal pursuant to any provision of this code, the seal shall contain the words "State of California" and "Department of Consumer Affairs" in addition to the title of the board, and shall be in a form approved by the director.

108. Functions of Boards

Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting

dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board.

108.5. Witness Fees and Expenses

In any investigation, proceeding or hearing which any board, commission or officer in the department is empowered to institute, conduct, or hold, any witness appearing at such investigation, proceeding or hearing whether upon a subpoena or voluntarily, may be paid the sum of twelve dollars (\$12) per day for every day in actual attendance at such investigation, proceeding or hearing and for his actual, necessary and reasonable expenses and such sums shall be a legal charge against the funds of the respective board, commission or officer; provided further, that no witness appearing other than at the instance of the board, commission or officer may be compensated out of such fund.

The board, commission or officer will determine the sums due any such witness and enter the amount on its minutes.

109. Finality of Decisions

(a) The decisions of any of the boards comprising the department with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, are not subject to review by the director, but are final within the limits provided by this code which are applicable to the particular board, except as provided in this section.

(b) The director may initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of an examination which is administered by a board, or in the review of qualifications which are a part of the licensing process of any board. A request for investigation shall be made by the director to the Division of Investigation through the chief of the division or to any law enforcement agency in the jurisdiction where the alleged misconduct occurred.

(c) The director may intervene in any matter of any board where an investigation by the Division of Investigation discloses probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a violation of criminal law.

The term "intervene," as used in paragraph (c) of this section may include, but is not limited to, an application for a restraining order or injunctive relief as specified in Section 123.5, or a referral or request for criminal prosecution. For purposes of this section, the director shall be deemed to have standing under Section 123.5 and shall seek representation of the Attorney General, or other appropriate counsel in the event of a conflict in pursuing that action.

(Amended by Stats. 1991, c. 1013 (SB 961), § 1.)

110. Records and Other Property; Examination Questions

The department shall have possession and control of all records, books, papers, offices, equipment, supplies, funds, appropriations, land and other

property—real or personal—now or hereafter held for the benefit or use of all of the bodies, offices or officers comprising the department. The title to all property held by any of these bodies, offices or officers for the use and benefit of the state, is vested in the State of California to be held in the possession of the department. Except as authorized by a board, the department shall not have the possession and control of examination questions prior to submission to applicants at scheduled examinations.

(Amended by Stats. 1996, c. 829 (AB 3473), § 1.)

111. Commissioners on Examination

Unless otherwise expressly provided, any board may, with the approval of the appointing power, appoint qualified persons, who shall be designated as commissioners on examination, to give the whole or any portion of any examination. A commissioner on examination need not be a member of the board but he shall have the same qualifications as one and shall be subject to the same rules.

112. Directory of Certificate Holders or Licensees

Notwithstanding any other provision of this code, no agency in the department, with the exception of the State Board of Registration for Professional Engineers, shall be required to compile, publish, sell, or otherwise distribute a directory. When an agency deems it necessary to compile and publish a directory, such agency shall cooperate with the director in determining its form and content, the time and frequency of its publication, the persons to whom it is to be sold or otherwise distributed, and its price if it is sold. Any agency which requires the approval of the director for the compilation, publication, or distribution of a directory, under the law in effect at the time the amendment made to this section at the 1970 Regular Session of the Legislature becomes effective, shall continue to require such approval. As used in this section, "directory" means a directory, roster, register, or similar compilation of the names of persons who hold a license, certificate, permit, registration, or similar indicia of authority from the agency.

113. Conferences; Expenses

Upon recommendation of the director, officers and employees of the department, and officers, members, and employees of the boards and commissions comprising it or subject to its jurisdiction may confer, in this State or elsewhere, with officers or employees of this State, its political subdivisions, other States, or the United States, or with such other persons, associations or organizations as may be of assistance to the department, board or commission in the conduct of its work. The officers, members and employees shall be entitled to their actual traveling expenses incurred in pursuance hereof, but when such expenses are incurred with respect to travel outside of the State, they shall be subject to the approval of the Governor and the Director of Finance.

114. License or Registration Expiring During War; Reinstatement in General

(a) Notwithstanding any other provision of this code, any licensee or registrant of any board, commission, or bureau within the department, who permitted his license or registration to expire while serving in any branch of the armed services of the United States during a period of war as defined in Section 114.5 of this code may, upon application, reinstate his license or registration without examination or penalty; provided,

(1) His license or registration was valid at the time he entered the armed services.

(2) That application for reinstatement is made while serving in the armed services, or not later than one year from the date of discharge from active service or return to inactive military status.

(3) The application for reinstatement is accompanied by an affidavit showing the date of entrance into the service, whether still in the service, or date of discharge, and the renewal fee for the current renewal period in which the application is filed is paid.

(b) If application for reinstatement is filed more than one year after discharge or return to inactive status, the applicant, in the discretion of the licensing agency, may be required to pass an examination.

(c) Unless otherwise specifically provided in this code, any licensee or registrant who, either part time or full time, practices in this State the profession or vocation for which he is licensed or registered shall be required to maintain his license in good standing even though he is in military service.

For the purposes in this section, time spent by a licensee in receiving treatment or hospitalization in any veterans' facility during which he is prevented from practicing his profession or vocation shall be excluded from said period of one year.

(Added by Stats. 1951, c. 185, p. 435, § 2. Amended by Stats. 1953, c. 423, p. 1672, § 1; Stats. 1961, c. 1253, p. 3021, § 1.)

114.5. License or Registration Expiring During War; War Defined

As used in Section 114 of this code, "war" means:

(a) Whenever Congress has declared war and peace has not formally been restored.

(b) Whenever the United States is engaged in active military operations against any foreign power, whether or not war has formally been declared.

(c) Whenever the United States is assisting the United Nations, in actions involving the use of armed force, to restore international peace and security.

(Added by Stats. 1953, c. 423, p. 1673, § 2.)

115. License or Registration Expiring During War; License or Registration Obtained While in Armed Services

The provisions of Section 114 of this code are also applicable to a licensee or registrant whose license or registration was obtained while in the armed services.

(Added by Stats. 1951, c. 1577, p. 3577, § 1.)

116. Disciplinary Matters; Audit and Review

(a) The director may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually, commencing March 1, 1995, regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

(Added by Stats. 1993, c. 1267 (SB 916), § 1.)

118. Withdrawal of Application for License; Suspension, Expiration or Forfeiture of License; Authority of Board

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

119. License Offenses

Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(Amended by Stats. 1990, c. 350 (SB 2084), § 1; Stats. 1990, c. 1207 (AB 3242), § 1; Stats. 1994, c. 1206 (SB 1775), § 1.)

121. License Offenses; Legality of Practice Between Renewal and Receipt of License

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

(Added by Stats. 1979, c. 77, p. 186, § 1.)

122. Copies of Licensure; Fees

Except as otherwise provided by law, the department and each of the boards, bureaus, committees, and commissions within the department may charge a fee for the processing and issuance of a duplicate copy of any certificate of licensure or other form evidencing licensure or renewal of licensure. The fee shall be in an amount sufficient to cover all costs incident to the issuance of the duplicate certificate or other form but shall not exceed twenty-five dollars (\$25).

(Added by Stats. 1986, c. 951, § 1.)

123. Subversion of Licensing Examinations or Administration of Examinations; Conduct Constituting Violation; Penalty

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without

authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Amended by Stats. 1991, c. 647 (SB 879), § 1.)

123.5. Engagement in Practices Constituting a Violation Under § 123; Injunction or Restraining Order

Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Section 123, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of a board, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

(Formerly § 497, added by Stats. 1983, c. 95, § 2. Renumbered § 123.5 and amended by Stats. 1989, c. 1022, § 4.)

124. Manner of Giving Written Notice

Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to the Administrative Procedure Act (Ch. 3.5 (commencing with Section 11340), Ch. 4 (commencing with Section 11370), and Ch. 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code), is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licensee or by personal service, at the option of the board.

(Amended by Stats. 1994, c. 26 (AB 1807), § 4, eff. March 30, 1994.)

125. Conspiracy with Unlicensed Person; Violations; Offense; Prohibited Practices

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

- (a) Allows his or her license to be used by that person.
- (b) Acts as his or her agent or partner.

125.3. Investigation and Enforcement Costs; Payment by Licensee

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(Added By Stats. 1992, c. 1059 (AB 3745), § 1; Stats. 1992, c. 1289 (AB 2743), § 1.)

125.5. Injunction; Law Governing Restitution; Reimbursement of Board Expenses

(a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. As used in this section, "board" includes commission, bureau, division, agency and a medical quality review committee.

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

(Amended by Stats. 1982, c. 517, p. 2301, § 1.)

125.6. Refusal to Perform Licensed Activity; Aiding or Inciting Refusal of Performance by Another Licensee; Discrimination or Restriction in Performance; Race, Color, Sex, Religion, Ancestry, Disability, Marital Status or National Origin

Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity. Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(b) A record of such an impairment.

(c) Being regarded as having such an impairment.

(Amended by Stats. 1992, c. 913 (AB 1077), § 2.)

125.7. Temporary Restraining Order or Other Appropriate Order; Petition; Affidavits; Notice; Accusation; Hearing; Review

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing

with Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2, may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

(Amended by Stats. 1982, c. 517, p. 2302, § 2; Stats. 1994, c. 1206 (SB 1775), § 3.)

125.8. Temporary Restraining or Other Appropriate Order Restraining Licensee; Law Governing; Accusation; Dissolution of Order

In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 has engaged or is about to

engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 3 (commencing with Section 5000) or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8 may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he is licensed.

(b) Such order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board must provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at such time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(Amended by Stats. 1982, c. 517, p. 2303, § 3.)

125.9. Citation Issuance System; Establishment; Mandatory and Permissive Provisions; Fines

(a) Except with respect to persons regulated under Chapter 8 (commencing with Section 6850), Chapter 11 (commencing with Section 7500), Chapter 11.5 (commencing with Section 7512), and Chapter 11.6 (commencing with Section 7590) of Division 3, or a person holding a license specified in paragraph (1), (6), or (7) of subdivision (b) of Section 9941, any board, bureau, or commission within the department may establish, by regulation, a system

for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Where appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed two thousand five hundred dollars (\$2,500) for each inspection or each investigation made with respect to the violation, or two thousand five hundred dollars (\$2,500) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

(Amended by Stats. 1991, c. 521 (SB 650), § 1; Stats. 1995, c. 381 (AB 910), § 4, eff. Aug. 5, 1995; Stats. 1995, c. 708 (SB 609), § 1.)

126. Reports to Governor; Exemption

Notwithstanding any other provision of this code, any board, commission, examining committee, or other similarly constituted agency within the department required prior to the effective date of this section to submit reports to the Governor under any provision of this code shall not be required to submit such reports.

127. Reports to Director

Notwithstanding any other provision of this code, the director may require such reports from any board, commission, examining committee, or other similarly constituted agency within the department as he deems reasonably necessary on any phase of their operations.

128. Unlawful Sale of Equipment, Supplies and Services

Notwithstanding any other provision of law, it is a misdemeanor to sell equipment, supplies, or services to any person with knowledge that the equipment, supplies, or services are to be used in the performance of a service or contract in violation of the licensing requirements of this code.

The provisions of this section shall not be applicable to cash sales of less than one hundred dollars (\$100).

For the purposes of this section, "person" includes, but is not limited to, a company, partnership, limited liability company, firm, or corporation.

For the purposes of this section, "license" includes certificate or registration.

A violation of this section shall be punishable by a fine of not less than one thousand dollars (\$1,000) and by imprisonment in the county jail not exceeding six months.

(Amended by Stats. 1994, c. 1010 (SB 2053), § 1.)

128.5. Agency with Unencumbered Funds; Reduction of License or Other Fees

(a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Board of Architectural Examiners, the Board of Behavioral Science Examiners, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nurse and Psychiatric Technician Examiners of California, or the Bureau of Security and Investigative Services has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within

limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(Amended by Stats. 1994, c. 26 (AB 1807), § 5, eff. March 30, 1994; Stats. 1995, c. 60 (SB 42), § 2, eff. July 6, 1995.)

129. Complaints About Licentiate; Notification of Action taken to Complainant; Relief Authorized; Reports

(a) As used in this section, "board" means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.

(b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.

(c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licentiate.

(d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board's functions and responsibilities under this section.

(e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

130. Term of Office; Expiration

(a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

- (1) Medical Board of California.
- (2) California Board of Podiatric Medicine.
- (3) Physical Therapy Examining Committee.

- (4) Board of Registered Nursing.
- (5) Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
- (6) State Board of Optometry.
- (7) California State Board of Pharmacy.
- (8) Veterinary Medical Board.
- (9) California Board of Architectural Examiners.
- (10) California State Board of Landscape Architects.
- (11) State Board of Barbering and Cosmetology.
- (12) State Board of Registration for Professional Engineers and Land Surveyors.
- (13) Contractors' State License Board.
- (14) State Board of Guide Dogs for the Blind.
- (15) State Board of Funeral Directors and Embalmers.
- (16) Board of Behavioral Science Examiners.
- (17) Structural Pest Control Board.
- (18) Cemetery Board.
- (19) Bureau of Electronic and Appliance Repair Advisory Board.
- (20) Court Reporters Board of California.
- (21) State Board of Registration for Geologists and Geophysicists.
- (22) State Athletic Commission.
- (23) Osteopathic Medical Board of California.
- (24) The Respiratory Care Board of California.
- (25) The Acupuncture Examining Committee.
- (26) The Board of Psychology.

(Amended by Stats. 1994, Ch. 26 (AB 1807), § 6, eff. March 30, 1994; Stats. 1994, c. 1274 (SB 2039), § 1.3; Stats. 1995, c. 60 (SB 42), § 3, eff. July 6, 1995.)

131. Consecutive Terms; Limit

Notwithstanding any other provision of law, no member of an agency designated in subdivision (b) of Section 130 or member of a board, commission, committee, or similarly constituted agency in the department shall serve more than two consecutive full terms.

(Amended by Stats. 1987, c. 850, § 5.)

132. Actions Against Other Agencies; Request to Director

No board, commission, examining committee, or any other agency within the department may institute or join any legal action against any other agency within the state or federal government without the permission of the director.

Prior to instituting or joining in a legal action against an agency of the state or federal government, a board, commission, examining committee, or any other agency within the department shall present a written request to the director to do so.

Within 30 days of receipt of the request, the director shall communicate his or her approval or denial of the request and his or her reasons for approval or denial to the requesting agency in writing. If the director does not act within 30 days, the request shall be deemed approved.

A requesting agency within the department may override the director's denial of its request to institute or join a legal action against a state or federal agency by a two-thirds vote of the members of the board, commission, examining committee, or other agency, which vote shall include the vote of at least one public member of that board, commission, examining committee, or other agency.

(Added by Stats. 1990, c. 285 (AB 2984), § 1.)

134. License Fees; Proration

When the term of any license issued by any agency in the department exceeds one year, initial license fees for licenses which are issued during a current license term shall be prorated on a yearly basis.

135. Failure on Prior Examinations; Limitations, Restrictions, etc. on Subsequent Examinations; Reexamination; Time; Regular Fees and Requirements

No agency in the department shall, on the basis of an applicant's failure to successfully complete prior examinations, impose any additional limitations, restrictions, prerequisites, or requirements on any applicant who wishes to participate in subsequent examinations except that any examining agency which allows an applicant conditional credit for successfully completing a divisible part of an examination may require that an applicant be reexamined in those parts successfully completed if such applicant has not successfully completed all parts of the examination within a required period of time established by the examining agency. Nothing in this section, however, requires the exemption of such applicant from the regular fees and requirements normally associated with examinations.

136. Notice of Change in Mailing Address

(a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.

(b) Except as otherwise provided by law, failure of a licensee to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

(Added by Stats. 1994, c. 26 (AB 1807), § 7, eff. March 30, 1994.)

137. License Numbers; Inclusion in Advertising, Solicitation and Presentments; Advertising, etc., by Person Other Than Licensee; Liability

Any agency within the department may promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.

However, nothing in this section shall be construed to authorize regulation of any person not a licensee who engages in advertising, solicitation, or who makes any other presentment to the public on behalf of a licensee. Such a person shall incur no liability pursuant to this section for communicating in

any advertising, soliciting, or other presentment to the public a licensee's license number exactly as provided to him by the licensee or for failure to communicate such number if none is provided to him by the licensee.

(Added by Stats. 1974, c. 743, p. 1642, § 3.)

140. Failure to Record and Preserve Cash Transactions Involving Wages; Disciplinary Action; Costs

Any board, as defined in Section 22, which is authorized under this code to take disciplinary action against a person who holds a license may take disciplinary action upon the ground that the licensee has failed to record and preserve for not less than three years, any and all cash transactions involved in the payment of employee wages by a licensee. Failure to make these records available to an authorized representative of the board may be made grounds for disciplinary action. In any action brought and sustained by the board which involves a violation of this section and any regulation adopted thereto, the board may assess the licensee with the actual investigative costs incurred, not to exceed two thousand five hundred dollars (\$2,500). Failure to pay those costs may result in revocation of the license. Any moneys collected pursuant to this section shall be deposited in the respective fund of the board.

(Added by Stats. 1984, c. 1490, § 2, eff. Sept. 27, 1984.)

143. Action for Collection of Compensation on Contract; Proof of License; Substantial Compliance; Application

(a) No person engaged in any business or profession for which a license is required under this code governing the department or any board, bureau, commission, committee, or program within the department, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required without alleging and proving that he or she was duly licensed at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.

(b) The judicial doctrine of substantial compliance shall not apply to this section.

(c) This section shall not apply to an act or contract that is considered to qualify as lawful practice of a licensed occupation or profession pursuant to Section 121.

(Added by Stats. 1990, c. 1207 (AB 3242), § 1.5.)

145. Legislative Findings and Declaration

The Legislature finds and declares that:

(a) Unlicensed activity in the professions and vocations regulated by the Department of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of California.

(b) The law enforcement agencies of the state should have sufficient, effective, and responsible means available to enforce the licensing laws of the state.

(c) The criminal sanction for unlicensed activity should be swift, effective, appropriate, and create a strong incentive to obtain a license.

(Added Stats. 1992, c. 1135 (SB 2044), § 2.)

146. Licensing, Certification or Authorization Provisions; Violations; Penalty for Infraction

(a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor, or

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

- (1) Sections 2052 and 2054.
- (2) Section 2630.
- (3) Section 2903.
- (4) Sections 3760 and 3761.
- (5) Section 4080.
- (6) Section 4825.
- (7) Section 4935.
- (8) Section 4980.
- (9) Section 4996.
- (10) Section 5536.
- (11) Section 6704.
- (12) Section 6980.10.
- (13) Section 7317.
- (14) Section 7502 or 7592.
- (15) Section 7520.
- (16) Section 7617 or 7641.
- (17) Subdivision (a) of Section 7872.
- (18) Section 8016.
- (19) Section 8505.
- (20) Section 8725.
- (21) Section 9681.
- (22) Section 9840.
- (23) Section 9884.6.
- (24) Subdivision (c) of Section 9891.24.

(25) Section 19049.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

(Amended by Stats. 1994, c. 26 (AB 1807), § 8, eff. March 30, 1994.)

146.5. Statutes Requiring Registration, Licensure, Certification, or Other Authorization to Engage in Business or Profession; Violations as Infraction; Punishment

(a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following occur:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

- (1) Section 2630.
- (2) Section 2903.
- (3) Sections 3760 and 3761.
- (4) Section 4825.
- (5) Section 4980.
- (6) Section 4996.
- (7) Section 5536.
- (8) Section 6704.
- (9) Section 6980.10.
- (10) Section 7317.
- (11) Section 7502 or 7592.
- (12) Section 7617 or 7641.
- (13) Subdivision (a) of Section 7872.
- (14) Section 8016.
- (15) Section 8505.

- (16) Section 8725.
- (17) Section 9681.
- (18) Section 9840.
- (19) Section 9855.1.
- (20) Section 9884.6.
- (21) Subdivision (c) of Section 9891.24.
- (22) Section 19049.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

(Added by Stats. 1993, c. 1265 (SB 798), § 1.)

Repeal

This section is repealed operative January 1, 1998, by its own terms.

147. Notice to Appear for Infraction Violation; Immunity of Person Issuing Notice

(a) Any employee designated by the director shall have the authority to issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. Employees so designated are not peace officers and are not entitled to safety member retirement benefits, as a result of such designation. The employee's authority is limited to the issuance of written notices to appear for infraction violations of provisions of this code and only when the violation is committed in the presence of the employee.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the person, at the time of such arrest, had reasonable cause to believe was lawful.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.)

148. Administrative Citations for License Violations; Use of Additional Enforcement Statutes

Any board, bureau, or commission within the department may, in addition to the administrative citation system authorized by Section 125.9, also establish, by regulation, a similar system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. The administrative citation system authorized by this section

shall meet the requirements of Section 125.9 and may not be applied to an unlicensed person who is otherwise exempted from the provisions of the applicable licensing act. The establishment of an administrative citation system for unlicensed activity does not preclude the use of other enforcement statutes for unlicensed activities at the discretion of the board, bureau, or commission.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.)

149. Telephone Directory Advertisement by Persons Without Proper License or Registration; Citation and Order of Correction

(a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction which requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

- (1) The State Board of Barbering and Cosmetology.
- (2) The State Board of Funeral Directors and Embalmers.
- (3) The Veterinary Medical Board.
- (4) The Hearing Aid Dispensers Examining Committee.
- (5) The State Board of Landscape Architects.
- (6) The California Board of Podiatric Medicine.
- (7) The Respiratory Care Board of California.
- (8) The Bureau of Home Furnishings and Thermal Insulation.
- (9) The Bureau of Security and Investigative Services.
- (10) The Bureau of Electronic and Appliance Repair.

- (11) The Bureau of Automotive Repair.
- (12) The Tax Preparers Program.
- (13) The California Board of Architectural Examiners.
- (14) The Speech-Language Pathology and Audiology Examining Committee.
- (15) The Board of Registration for Professional Engineers and Land Surveyors.
- (16) The Board of Behavioral Science Examiners.
- (17) The State Board of Registration for Geologists and Geophysicists.
- (18) The Structural Pest Control Board.
- (19) The Acupuncture Examining Committee.
- (20) The Board of Psychology.
- (21) The State Board of Accountancy.

(Amended by Stats. 1994, c. 26 (AB 1807), § 9, eff. March 30, 1994; Stats. 1994, c. 1274 (SB 2039), § 1.5; Stats. 1995, c. 60 (SB 42), § 4, eff. July 6, 1995.)

CHAPTER 2. THE DIRECTOR OF CONSUMER AFFAIRS

150. Director; Civil Executive Officer; Control

The department is under the control of a civil executive officer who is known as the Director of Consumer Affairs.

151. Appointment; Tenure; Compensation; Traveling Expenses

The director is appointed by the Governor and holds office at the Governor's pleasure. The director shall receive the annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code, and his or her necessary traveling expenses.

(Amended by Stats. 1985, c. 106, § 1.)

152. Organization of Department

For the purpose of administration, the reregistration and clerical work of the department is organized by the director, subject to the approval of the Governor, in such manner as he deems necessary properly to segregate and conduct the work of the department.

152.5. Extension of License, Certificate or Permit Renewal Dates

For purposes of distributing the reregistration work of the department uniformly throughout the year as nearly as practicable, the boards in the department may, with the approval of the director, extend by not more than six months the date fixed by law for the renewal of any license, certificate or permit issued by them, except that in such event any renewal fee which may be involved shall be prorated in such manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

152.6. Spreading Renewal Dates

Notwithstanding any other provision of this code, each board within the department shall, in cooperation with the director, establish such license periods and renewal dates for all licenses in such manner as best to

distribute the renewal work of all boards throughout each year and permit the most efficient, and economical use of personnel and equipment. To the extent practicable, provision shall be made for the proration or other adjustment of fees in such manner that no person shall be required to pay a greater or lesser fee than he would have been required to pay if the change in license periods or renewal dates had not occurred.

As used in this section "license" includes "certificate," "permit," "authority," "registration," and similar indicia of authority to engage in a business or profession, and "board" includes "board," "commission," "committee," and an individual who is authorized to renew a license.

153. Investigation

The director may investigate the work of the several boards in his department and may obtain a copy of all records and full and complete data in all official matters in possession of the boards, their members, officers, or employees, other than examination questions prior to submission to applicants at scheduled examinations.

154. Personnel in General

Any and all matters relating to employment, tenure or discipline of employees of any board, agency or commission, shall be initiated by said board, agency or commission, but all such actions shall, before reference to the State Personnel Board, receive the approval of the appointing power.

To effect the purposes of Division 1 of this code and each agency of the department, employment of all personnel shall be in accord with Article XXIV of the Constitution, the law and rules and regulations of the State Personnel Board. Each board, agency or commission, shall select its employees from a list of eligibles obtained by the appointing power from the State Personnel Board. The person selected by the board, agency or commission to fill any position or vacancy shall thereafter be reported by the board, agency or commission, to the appointing power.

154.5. Employee of Board Providing Expertise in Evaluating Applicants or Conduct of Licensees, Named as Defendants in Civil Action; Legal Representation Provided by Board, Nonliability of Board for Judgment; Utilization of Attorney General

If a person, not a regular employee of a board under this code, including the Board of Chiropractic Examiners and the Osteopathic Medical Board of California, is hired or under contract to provide expertise to the board in the evaluation of an applicant or the conduct of a licensee, and that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall not be liable for any judgment rendered against the person. The Attorney General shall be utilized in the action and his or her services shall be a charge against the board.

(Amended by Stats. 1991, c. 359 (AB 1332), § 3.)

155. Investigators, Inspectors and Deputies

(a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary properly to investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

(Amended by Stats. 1985, c. 1382, § 1.)

156. Contracts

(a) The director may, for the department and at the request and with the consent of a board within the department on whose behalf the contract is to be made, enter into contracts pursuant to Chapter 3 (commencing with Section 11250) of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code for and on behalf of any board within the department.

(b) In accordance with subdivision (a), the director may, in his or her discretion, negotiate and execute contracts for examination purposes which include provisions which hold harmless a contractor where liability resulting from a contract between a board in the department and the contractor is traceable to the state or its officers, agents, or employees.

(Added by Stats. 1953, c. 864, p. 2211, § 1. Amended by Stats. 1984, c. 144, § 3; Stats. 1988, c. 1448, § 1.)

156.1. Individuals or Entities Contracting for Provision of Services Relating to Treatment and Rehabilitation of Licentiates Impaired by Alcohol or Dangerous Drugs; Retention of Records; Confidentiality; Other Contracts for Services; Examination and Audit of Records

(a) Notwithstanding any other provision of law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs, shall retain all records and documents pertaining to those services until such time as these records and

documents have been reviewed for audit by the department. These records and documents shall be retained for a maximum of three years from the date of the last treatment or service rendered to that licentiate, or until such time as the records pertaining to treatment or services rendered to that licentiate are audited, whichever occurs first, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Notwithstanding any other provision of law, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department's internal auditor of all performance under the contract. For this purpose, all documents and records of the contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the Auditor General to conduct any examination or audit under the terms of Section 10532 of the Government Code.

(Added by Stats. 1991, c. 654 (AB 1893), § 3.)

156.5. Rental Agreements

The director may negotiate and execute for the department and for its component agencies, rental agreements for short-term hiring of space and furnishings for examination or meeting purposes. The director may, in his or her discretion, negotiate and execute contracts for that space which include provisions which hold harmless the provider of the space where liability resulting from use of the space under the contract is traceable to the state or its officers, agents, or employees. Notwithstanding any other provision of law, the director may, in his or her discretion, advance payments as deposits to reserve and hold examination or meeting space. Any such agreement is subject to the approval of the legal office of the Department of General Services.

(Added by Stats. 1967, c. 1235, p. 3005, § 1. Amended by Stats. 1988, c. 1448, § 1.5.)

157. Expenses of Prosecutions or Unprofessional Conduct Proceedings

Expenses incurred by any board or on behalf of any board in any criminal prosecution or unprofessional conduct proceeding constitute proper charges against the funds of the board.

158. Refunds; Claims and Warrants

With the approval of the Director of Consumer Affairs, the boards and commissions comprising the department or subject to its jurisdiction may

make refunds to applicants who are found ineligible to take the examinations or whose credentials are insufficient to entitle them to certificates or licenses.

Notwithstanding any other provision of law any application fees, license fees or penalties imposed and collected illegally, by mistake, inadvertence, or error shall be refunded. Claims authorized by the department shall be filed with the State Controller, and the Controller shall draw his warrant against the fund of the agency in payment of such refund.

159. Administration of Oaths and Affirmations; Certification

The members and the executive officer of each board, agency, bureau, division, or commission have power to administer oaths and affirmations in the performance of any business of the board, and to certify to official acts.

159.5. Division of Investigation; Chief of Division; Personnel

There is in the department the Division of Investigation. The division is in charge of a person with the title of chief of the division.

Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, to the agencies in the department shall be in the division and the personnel shall be appointed by the director. However, if, pursuant to the Governor's Reorganization Plan No. 2 of the 1970 Regular Session, any agency has any investigative, inspectional, or auditing positions of its own, the agency shall retain those positions until the director determines, after consultation with, and consideration of, the views of the particular agency concerned, that the positions should be transferred to the division in the interests of efficient, economical, and effective service to the public, at which time they shall be so transferred.

(Amended by Stats. 1985, c. 1382, § 2.)

160. Chief and Investigators; Authority of Peace Officers

The Chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Board of Dental Examiners have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

(Amended by Stats. 1989, c. 886, § 4.)

161. Sale of Copies of Records

The department, or any board in the department, may sell copies of any part of its respective public records, or compilations, extracts, or summaries of information contained in its public records, at a charge sufficient to pay the

actual cost thereof. Such charge, and the conditions under which sales may be made, shall be determined by the director with the approval of the Department of General Services.

162. Officer's Certificate as Evidence

The certificate of the officer in charge of the records of any board in the department that any person was or was not on a specified date, or during a specified period of time, licensed, certified or registered under the provisions of law administered by the board, or that the license, certificate or registration of any person was revoked or under suspension, shall be admitted in any court as prima facie evidence of the facts therein recited.

163. Fee for Certification of Records and Documents

Except as otherwise expressly provided by law, the department and each board in the department shall charge a fee of two dollars (\$2) for the certification of a copy of any record, document, or paper in its custody or for the certification of any document evidencing the content of any such record, document or paper.

163.5. Delinquency, Penalty or Late Fee; Assessment; Reinstatement Fee; Percentage of Renewal Fee

Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for such license in effect on the date of the renewal of the license, but not less than twenty-five dollars (\$25) nor more than one hundred fifty dollars (\$150).

A delinquency, penalty, or late fee shall not be assessed until 30 days have elapsed from the date that the licensing agency mailed a notice of renewal to the licensee at the licensee's last known address of record. The notice shall specify the date for timely renewal, and that failure to renew in a timely fashion shall result in the assessment of a delinquency, penalty, or late fee.

In the event a reinstatement or like fee is charged for the reinstatement of a license, the reinstatement fee shall be 150 percent of the renewal fee for such license in effect on the date of the reinstatement of the license, but not more than twenty-five dollars (\$25) in excess of the renewal fee, except that in the event that such a fee is fixed by statute at less than 150 percent of the renewal fee and less than the renewal fee plus twenty-five dollars (\$25), the fee so fixed shall be charged.

(Amended by Stats. 1985, c. 587, § 1.)

164. Determination of Form and Content of Licenses, Certificates, Permits, or Similar Indicia of Authority

The form and content of any license, certificate, permit, or similar indicia of authority issued by any agency in the department, including any document evidencing renewal of a license, certificate, permit, or similar indicia of authority, shall be determined by the director after consultation with and consideration of the views of the agency concerned.

165. Fiscal Impact Analysis Relating to Pending Legislation; Review and Comment; Transmittal of Fiscal Data

Notwithstanding any other provision of law, no board, bureau, committee, commission, or program in the Department of Consumer Affairs shall submit to the Legislature any fiscal impact analysis relating to legislation pending before the Legislature until the analysis has been submitted to the Director of Consumer Affairs, or his or her designee, for review and comment. The boards, bureaus, committees, commissions, and programs shall include the comments of the director when submitting any fiscal impact analysis to the Legislature. This section shall not be construed to prohibit boards, bureaus, committees, commissions, and programs from responding to direct requests for fiscal data from Members of the Legislature or their staffs. In those instances it shall be the responsibility of boards, bureaus, committees, commissions, and programs to also transmit that information to the director, or his or her designee, within five working days.

(Added by Stats. 1984, c. 268, § 2, eff. June 30, 1984.)

166. Mandatory Continuing Education Programs; Guidelines

The director shall, by regulation, develop guidelines to prescribe components for mandatory continuing education programs administered by any board within the department.

(a) The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection. The guidelines shall require mandatory continuing education programs to address, at least, the following:

- (1) Course validity.
- (2) Occupational relevancy.
- (3) Effective presentation.
- (4) Actual attendance.
- (5) Material assimilation.
- (6) Potential for application.

(b) The director shall consider educational principles, and the guidelines shall prescribe mandatory continuing education program formats to include, but not be limited to, the following:

- (1) The specified audience.
- (2) Identification of what is to be learned.
- (3) Clear goals and objectives.
- (4) Relevant learning methods (participatory, hands-on, or clinical setting).
- (5) Evaluation, focused on the learner and the assessment of the intended learning outcomes (goals and objectives).

(c) Any board within the department that, after January 1, 1993, proposes a mandatory continuing education program for its licensees shall submit the proposed program to the director for review to assure that the program contains all the elements set forth in this section and complies with the guidelines developed by the director.

(d) Any board administering a mandatory continuing education program that proposes to amend its current program shall do so in a manner consistent with this section.

(e) Any board currently administering a mandatory continuing education program shall review the components and requirements of the program to determine the extent to which they are consistent with the guidelines developed under this section. The board shall submit a report of their findings to the director. The report shall identify the similarities and differences of its mandatory continuing education program. The report shall include any board-specific needs to explain the variation from the director's guidelines.

(f) Any board administering a mandatory continuing education program, when accepting hours for credit which are obtained out of state, shall ensure that the course for which credit is given is administered in accordance with the guidelines addressed in subdivision (a).

(g) Nothing in this section or in the guidelines adopted by the director shall be construed to repeal any requirements for continuing education programs set forth in any other provision of this code.

(Added by Stats. 1992, c. 1135 (SB 2044), § 2.2. Amended by Stats. 1994, c. 146 (AB 3601), § 1.)

CHAPTER 3. FUNDS OF THE DEPARTMENT

201. Pro Rata Charge for Administrative Expenses

A charge for the estimated administrative expenses of the department, not to exceed the available balance in any appropriation for any one fiscal year, may be levied in advance on a pro rata share basis against any of the funds of any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance.

CHAPTER 4. CONSUMER AFFAIRS

Article 3. Powers and Duties

310. Powers and Duties

The director shall have the following powers and it shall be his duty to:

(a) Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.

(b) Represent the consumer's interests before federal and state legislative hearings and executive commissions.

(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.

(d) Study, investigate, research, and analyze matters affecting the interests of consumers.

(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information.

(f) Propose and assist in the creation and development of consumer education programs.

(g) Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services.

(h) Advise the Governor and Legislature on all matters affecting the interests of consumers.

(i) Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.

(j) Maintain contact and liaison with consumer groups in California and nationally.

312. Reports and Recommendations

The director shall submit to the Governor and the Legislature during the month of December prior to each regular session of the Legislature a full and accurate report of the activities of the department relating to consumer affairs and an evaluation of the consumer programs of each state agency. Such report shall include recommendations, when appropriate, for legislation which will protect and promote the interests of consumers. A copy shall be filed with the Secretary of State.

The required evaluation of the consumer programs of each state agency shall include, but is not limited to, comment with respect to the scope, effectiveness, and efficiency of such programs within each agency as well as deficiencies noted in the coordination, administration, or enforcement of such programs.

The director shall include within the report information regarding his or her experience in obtaining and disseminating information with respect to information available from other departments of the state.

313.1. Rules and Regulations; Fee Changes; Approval of Director

(a) Notwithstanding any other provision of law to the contrary, no rule or regulation, except those relating to examinations and qualifications for licensure, and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.

(b) The director shall be formally notified of and shall be provided a full opportunity to review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and this section, all of the following:

(1) All notices of proposed action, any modifications and supplements thereto, and the text of proposed regulations.

(2) Any notices of sufficiently related changes to regulations previously noticed to the public, and the text of proposed regulations showing modifications to the text.

(3) Final rulemaking records.

(c) The submission of all notices and final rulemaking records to the director and the completion of the director's review, as authorized by this

section, shall be a precondition to the filing of any rule or regulation with the Office of Administrative Law. The Office of Administrative Law shall have no jurisdiction to review a rule or regulation subject to this section until after the completion of the director's review and only then if the director has not disapproved it. The filing of any document with the Office of Administrative Law shall be accompanied by a certification that the board, commission, or committee has complied with the requirements of this section.

(d) Following the receipt of any final rulemaking record subject to subdivision (a), the director shall have the authority for a period of 30 days to disapprove a proposed rule or regulation on the ground that it is injurious to the public health, safety, or welfare.

(e) Final rulemaking records shall be filed with the director within the one-year notice period specified in Section 11346.4 of the Government Code. If necessary for compliance with this section, the one-year notice period may be extended, as specified by this subdivision.

(1) In the event that the one-year notice period lapses during the director's 30-day review period, or within 60 days following the notice of the director's disapproval, it may be extended for a maximum of 90 days.

(2) If the director approves the final rulemaking record or declines to take action on it within 30 days, the board, commission, or committee shall have five days from the receipt of the record from the director within which to file it with the Office of Administrative Law.

(3) If the director disapproves a rule or regulation, it shall have no force or effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Nothing in this section shall be construed to prohibit the director from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him or her, in which event it shall become effective upon compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1991, c. 654 (AB 1893), § 4; Stats. 1992, c. 1289 (AB 2743), § 2; Amended by Stats. 1994, c. 26 (AB 1807), § 13, eff. March 30, 1994.)

313.2. Americans with Disabilities Act; Regulations; Professional Licensing and Certification

The director shall adopt regulations to implement, interpret, and make specific the provisions of the Americans with Disabilities Act (P.L. 101-336), as they relate to the examination process for professional licensing and certification programs under the purview of the department.

(Added by Stats. 1992, c. 1289 (AB 2743), § 3.)

Article 4. Representation of Consumers

320. Intervention to Protect Consumer Interests

Whenever there is pending before any state commission, regulatory agency, department, or other state agency, or any state or federal court or agency, any matter or proceeding which the director finds may affect substantially the interests of consumers within California, the director, or the Attorney General, may intervene in such matter or proceeding in any appropriate manner to represent the interests of consumers. The director, or any officer or employee designated by the director for that purpose, or the Attorney General, may thereafter present to such agency, court, or department, in conformity with the rules of practice and procedure thereof, such evidence and argument as he shall determine to be necessary, for the effective protection of the interests of consumers.

321. Commencement of Legal Proceedings

Whenever it appears to the director that the interests of the consumers of this state are being damaged, or may be damaged, by any person who engaged in, or intends to engage in, any acts or practices in violation of any law of this state, or any federal law, the director or any officer or employee designated by the director, or the Attorney General, may commence legal proceedings in the appropriate forum to enjoin such acts or practices and may seek other appropriate relief on behalf of such consumers.

Article 5. Consumer Complaints

325. Reception of Complaints

It shall be the duty of the director to receive complaints from consumers concerning (a) unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in the conduct of any trade or commerce; (b) the production, distribution, sale, and lease of any goods and services undertaken by any person which may endanger the public health, safety, or welfare; (c) violations of provisions of this code relating to businesses and professions licensed by any agency of the department, and regulations promulgated pursuant thereto; and (d) other matters consistent with the purposes of this chapter, whenever appropriate.

326. Notice of Complaint; Referral; Patterns of Complaints

(a) Upon receipt of any complaint pursuant to Section 325, the director may notify the person against whom the complaint is made of the nature of the complaint and may request appropriate relief for the consumer.

(b) The director shall also transmit any valid complaint to the local, state or federal agency whose authority provides the most effective means to secure the relief.

The director shall, if appropriate, advise the consumer of the action taken on the complaint and of any other means which may be available to the consumer to secure relief.

(c) If the director receives a complaint or receives information from any source indicating a probable violation of any law, rule, or order of any regulatory agency of the state, or if a pattern of complaints from consumers develops, the director shall transmit any complaint he or she considers to be valid to any appropriate law enforcement or regulatory agency and any evidence or information he or she may have concerning the probable violation or pattern of complaints or request the Attorney General to undertake appropriate legal action. It shall be the continuing duty of the director to discern patterns of complaints and to ascertain the nature and extent of action taken with respect to the probable violations or pattern of complaints.

(Amended by Stats. 1989, c. 1360, § 1.)

327. Reports; Contents

The director shall submit to the Governor and the Legislature as part of his annual report information concerning his activities pursuant to Section 326, including the number and general patterns of consumer complaints, the action taken on such complaints, the results of such action, if available, and recommendations which will further the state's capability to resolve consumer complaints.

Article 6. Information

335. Dissemination

The director shall disseminate to the public in such form and manner as he deems most appropriate information, statistics, and other data concerning the following:

- (a) Functions, duties, powers, and activities of the department and of those agencies whose authority provides relief from commercial and trade practices which are inimical to the interests of the consumer.
- (b) Commercial and trade practices which are detrimental to consumers.
- (c) Goods and services which are unsafe, unhealthful or inimical to the general welfare of consumers.
- (d) General economic conditions.
- (e) Test results, analyses, and studies of consumer products and services in the possession of state and federal agencies.
- (f) Consumer education which the director may develop on his own initiative or obtain from other sources.
- (g) Legislation of interest to consumers.

336. Annual Report

The director shall include as part of his annual report information regarding his activities pursuant to this article and his success in obtaining and disseminating information with respect to information available from other departments of the state.

CHAPTER 6. PUBLIC MEMBERS

450. Qualifications; Employment or Contractual Relationship

In addition to the qualifications provided in the respective chapters of this code, a public member or a lay member of any board shall not be, nor shall he have been within the period of five years immediately preceding his appointment, any of the following:

(a) An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licentiate of such board, except that this shall not preclude the appointment of a person which maintains infrequent employer status with such licentiate, or maintains a client, patient, or customer relationship with any such licentiate which does not constitute more than 2 percent of the practice or business of the licentiate.

(b) A person maintaining a contractual relationship with a licentiate of such board, which would constitute more than 2 percent of the practice or business of any such licentiate, or an officer, director, or substantially full-time representative of such person or group of persons.

(c) An employee of any licentiate of such board, or a representative of such employee, except that this shall not preclude the appointment of a person who maintains an infrequent employee relationship or a person rendering professional or related services to a licentiate if such employment or service does not constitute more than 2 percent of the employment or practice of the member of the board.

450.3. Financial Interest in Organization Subject to Regulation

No public member shall either at the time of his appointment or during his tenure in office have any financial interest in any organization subject to regulation by the board, commission or committee of which he is a member.

450.4. Expert Public Member

Each board shall have, as one of its public members, a person who possesses expertise in one or more significant portions of the board's regulated activities.

450.5. Qualifications; Conflicting Pursuits

A public member, or a lay member, shall not have been engaged at any time within five years immediately preceding his appointment in pursuits which lie within the field of the industry or profession regulated by the board of which he is a member, nor shall he engage in any such pursuits during his term of office.

450.6. Age Requirement

Notwithstanding any other section of law, a public member may be appointed without regard to age so long as the public member has reached the age of majority prior to appointment.

451. Delegated Authority; Restrictions

If any board shall as a part of its functions delegate any duty or responsibility to be performed by a single member of such board, such delegation shall not be made solely to any public member or any lay member of the board in any of the following instances:

(a) The actual preparation of, the administration of, and the grading of, examinations.

(b) The inspection or investigation of licentiates, the manner or method of practice or doing business, or their place of practice or business.

Nothing in this section shall be construed as precluding a public member or a lay member from participating in the formation of policy relating to the scope of the activities set forth in subdivisions (a) and (b) or in the approval, disapproval or modification of the action of its individual members, nor preclude such member from participating as a member of a subcommittee consisting of more than one member of the board in the performance of any duty.

452. Board Defined

"Board," as used in this chapter, includes a board, advisory board, commission, examining committee, committee or other similarly constituted body exercising powers under this code.

CHAPTER 7. LICENSEE

460. Validity of State License in Municipalities; Local License Taxes

No city or county shall prohibit a person, authorized by one of the agencies in the Department of Consumer Affairs by a license, certificate, or other such means to engage in a particular business, from engaging in that business, occupation, or profession or any portion thereof. Nothing in this section shall prohibit any city or county or city and county from levying a business license tax solely for revenue purposes nor any city or county from levying a license tax solely for the purpose of covering the cost of regulation.

461. Applications; Record of Arrest Not Resulting in Conviction or Plea of Nolo Contendere; Prohibition; Exceptions

No public agency, state or local, shall, on an initial application form for any license, certificate or registration, ask for or require the applicant to reveal a record of arrest that did not result in a conviction or a plea of nolo contendere. A violation of this section is a misdemeanor.

This section shall apply in the case of any license, certificate or registration provided for by any law of this state or local government, including, but not limited to, this code, the Corporations Code, the Education Code, and the Insurance Code.

462. Inactive Category of Licensure; Regulations; Application

(a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following provisions:

(1) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.

(2) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license.

(3) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board.

(4) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with all the following:

(A) Pay the renewal fee.

(B) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

(c) This section shall not apply to any healing arts board as specified in Section 701.

(Added by Stats. 1994, c. 26 (AB 1807), § 14, eff. March 30, 1994.)

DIVISION 1.2. LEGISLATIVE SUNSET REVIEW COMMITTEE

473. Establishment; Members; Powers and Duties; Staff; Termination

(a) There is hereby established the Joint Legislative Sunset Review Committee.

(b) The Joint Legislative Sunset Review Committee shall consist of three members appointed by the Senate Committee on Rules and three members appointed by the Speaker of the Assembly. No more than two of the three members appointed from either the Senate or the Assembly shall be from the same party. The Joint Rules Committee shall annually appoint the chairperson of the committee. The chairperson of this committee may not sit as the chairperson of either standing committee.

(c) The Joint Legislative Sunset Review Committee shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.

(d) The Speaker of the Assembly and the Senate Committee on Rules may designate staff for the Joint Legislative Sunset Review Committee.

(e) The Joint Legislative Sunset Review Committee is authorized to act until January 1, 2004, at which time the committee's existence shall terminate.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.1. Application of Division; Boards

This division shall apply to every board, as defined in Section 22, that is scheduled to become inoperative on July 1, 1997, July 1, 1998, or July 1, 1999,

and to be repealed on either January 1, 1998, January 1, 1999, or January 1, 2000, respectively, by the act which enacted this division.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.2. Analysis and Report by Boards; Contents

All boards to which this division applies shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the Joint Legislative Sunset Review Committee no later than one year plus 90 days prior to the January 1st of the year during which that board shall become inoperative. The analysis and report shall include, at a minimum, all of the following:

(a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.

(b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.

(c) The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.

(d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, relevancy and validity of the licensing examination, and passage rate and areas of examination.

(e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.3. Public Hearings Prior to Termination, Continuation, or Reestablishment of any Board; Burden of Proof

Prior to the termination, continuation, or reestablishment of any board or any of the board's functions, the Joint Legislative Sunset Review Committee shall, during the interim recess preceding the date upon which a board becomes inoperative, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, and the public and regulated industry. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.4. Evaluation and Determination of Whether Public need Demonstrated to Warrant Continued Existence; Minimum Performance Standards; Responsibilities and Jurisdiction of Board; Alternatives

(a) The Joint Legislative Sunset Review Committee shall evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for

the degree of regulation the board or regulatory program implements based on the following factors and minimum standards of performance:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.

(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.

(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

(b) The Joint Legislative Sunset Review Committee shall consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

(c) Nothing in this section precludes any board from submitting other appropriate information to the Joint Legislative Sunset Review Committee.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

473.5. Committee Report on Findings and Recommendations; Contents

The Joint Legislative Sunset Review Committee shall report its findings and recommendations to the department for its review, and, within 60 days of receiving the report, the department shall report its findings and recom-

mendations, which shall incorporate the findings and recommendations of the Joint Legislative Sunset Review Committee, to the Legislature during the next year of the regular session that follows the hearings described in Section 473.3. The report shall include whether each board or function scheduled for repeal shall be terminated, continued, or reestablished, and whether its functions should be revised. If the committee or the department deems it advisable, the report may include proposed bills to carry out its recommendations.

(Added by Stats. 1994, c. 908 (SB 2036), § 5.)

DIVISION 1.5. DENIAL, SUSPENSION AND REVOCATION OF LICENSES

CHAPTER 1. GENERAL PROVISIONS

475. Denial of Licenses; Grounds

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

(Amended by Stats. 1992, c. 1289 (AB 2743), § 5.)

476. Inapplicability of Division to Certain Persons

Nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(Amended by Stats. 1983, c. 721, § 1.)

477. Board; License

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

(Amended by Stats. 1991, c. 654 (AB 1893), § 5.)

478. Application; Material

(a) As used in this division, "application" includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.

(b) As used in this division, "material" includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

(Added by Stats. 1992, c. 1289 (AB 2743), 6.)

CHAPTER 2. DENIAL OF LICENSES

480. Acts Disqualifying Applicant

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

(Amended by Stats. 1979, c. 876, p. 3057, § 2.)

481. Criteria; Crime or Act Substantially Related to Qualifications, Functions or Duties

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to

determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

482. Evaluation of Rehabilitation; Criteria

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

484. Attestation by Other Persons to Good Moral Character; Requirement for Application for License

No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

485. Procedure by Board Upon Denial of Application for License

Upon denial of an application for a license, under this chapter the board shall:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; or, in the alternative,

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his application or otherwise. Service by mail is complete on the date of mailing.

486. Reapplication; Informing Applicant of Requirements

Where the board has denied an application for a license under this chapter it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

- (a) The earliest date on which the applicant may reapply for a license.
- (b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

487. Hearing

If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

489. Denial of License for Lack of Good Character

Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480, may without a hearing deny an application upon such a ground, if within one year previously, and after proceedings conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, such agency has denied an application from the same applicant upon the same ground.

(Formerly § 116, added by Stats. 1955, c. 1151, § 1. Amended by Stats. 1978, c. 1161, § 2. Renumbered § 489 and amended by Stats. 1989, c. 1104, § 1.)

CHAPTER 3. SUSPENSION AND REVOCATION OF LICENSES

490. Conviction of Crime; Relationship of Crime to Licensed Activity

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(Amended by Stats. 1992, c. 1289 (AB 2743), § 7.)

490.5. Noncompliance with Support Order or Judgment

A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment.

(Added by Stats. 1994, c. 906 (AB 923), § 1, operative Jan. 1, 1996.)

491. Information to Ex-Licensee

Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

492. Healing Arts; Disciplinary Action or License Denial Notwithstanding Drug Diversion Program; Exception

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

(Amended by Stats. 1994, c. 26 (AB 1807), § 15, eff. March 30, 1994.)

493. Record of Convictions Related to Qualifications, Functions and Duties of Licensees

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(Formerly § 117, added by Stats. 1961, c. 934, § 1. Amended by Stats. 1978, c. 1161, § 3. Renumbered § 493 and amended by Stats. 1989, c. 1104, § 1.3.)

494. Interim Order; Notice; Hearing; Decision; Judicial Review; Noncompliance

(a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licensee or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licensee has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim

order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licensee, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licensee was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licensee from his or her business or profession, and the licensee violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licensee and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

(Added by Stats. 1993, c. 840 (SB 842), § 1. Amended by Stats. 1994, c. 1275 (SB 2101, § 4.)

CHAPTER 4. PUBLIC REPROVALS

495. Authority; Procedure

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licensee or certificate holder thereof, for any act which would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 5. EXAMINATION SECURITY

496. Violation of § 123; Denial, Suspension, or Revocation of License

A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

(Added by Stats. 1989, c. 1022, § 3.)

498. License Secured by Fraud, Deceit or Knowing Misrepresentation

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

(Added by Stats. 1992, c. 1289 (AB 2743), § 8.)

499. False Statement in Support of Another Person's Application

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

(Added by Stats. 1992, c. 1289 (AB 2743), § 9.)

DIVISION 2. HEALING ARTS

CHAPTER 1. GENERAL PROVISIONS

Article 7. Nursing

675. Notice of Unaccredited Course of Instruction

Every person, firm, association, partnership, or corporation offering a course of instruction in any type of nursing, including vocational nursing or practical nursing, which course of instruction is not accredited by the Board of Registered Nursing or by the Board of Vocational Nurse and Psychiatric

Technician Examiners and completion of which will not qualify a person to take the examinations given by such boards shall notify an applicant for admission thereto that the course of instruction is not accredited by such boards and that completion thereof will not qualify the person to take the examinations given by such boards.

The notice required by this section shall be in writing in at least 12-point boldface type, and in no event less than two points larger than the type in any other portion of the notice or contract, and shall be given to an applicant prior to the signing of any contract by such applicant or, if no contract is signed, prior to the making of any deposit or other payment by such applicant.

If an applicant is required to sign a contract in order to enroll in the course of instruction, the notice required by this section shall be contained in such contract directly above the place for the applicant's signature.

676. Applicability of Article

The provisions contained in this article shall not apply to inservice training programs given in institutions for the purpose of qualifying persons to work therein, to public schools, to private schools or institutions offering advanced nursing education to registered nurses or vocational nurses licensed in the United States, or to schools conducted by any recognized church or denomination for the purpose of training the adherents of such church or denomination in the care of the sick in accordance with its religious tenets.

677. Maintenance of Records; Inspection; Contents

Every person, firm, association, partnership, or corporation subject to the provisions of this article shall maintain records for at least three years, which records shall be open to inspection by investigators of the Division of Investigation of the department and by peace officers acting in their official capacity.

The records shall include the names and address of the persons admitted to the course of instruction and a copy of any written contract signed by such a person or, if no contract is signed, a copy of the written notice given to such person.

A correspondence school whose home office is located outside of this state need maintain the foregoing records only for persons residing in this state.

678. Effect of Failure to Give Notice Upon Validity of Contracts

The failure to give the notice required by this article shall make any contract entered into between the parties null and void.

679. Violation; Misdemeanor

Any person, firm, association, partnership, or corporation who violates this article is guilty of a misdemeanor.

Article 10. Federal Personnel

715. License Requirements; Exemptions

Unless otherwise required by federal law or regulation, no board under this division which licenses dentists, physicians and surgeons, podiatrists, or

nurses may require a person to obtain or maintain any license to practice a profession or render services in the State of California if one of the following applies:

(a) The person practicing a profession or rendering services does so exclusively as an employee of a department, bureau, office, division, or similarly constituted agency of the federal government, and provides medical services exclusively on a federal reservation or at any facility wholly supported by and maintained by the United States government.

(b) The person practicing a profession or rendering services does so solely pursuant to a contract with the federal government on a federal reservation or at any facility wholly supported and maintained by the United States government.

(c) The person practicing a profession or rendering services does so pursuant to, or as a part of a program or project conducted or administered by a department, bureau, office, division, or similarly constituted agency of the federal government which by federal statute expressly exempts persons practicing a profession or rendering services as part of the program or project from state laws requiring licensure.

(Added by Stats. 1983, c. 239, § 2. Amended by Stats. 1986, c. 220, § 7.5, urgency eff. June 30, 1986.)

716. Denial of Issuance of License or Disciplinary Action to State Licensee

Notwithstanding any other provision of law, a board under this division may deny issuance of a license to an applicant or take disciplinary action against the holder of a California license for acts or omissions committed by the applicant or licensee in the course of professional practice or rendering services described in Section 715 if both of the following apply:

(a) The acts or omissions committed by the applicant or licensee constituted grounds for denial or discipline pursuant to the laws of this state governing licensees or applicants for licensure for the profession or vocation in question.

(b) The acts or omissions constituting the basis for denial or discipline by the agency were not authorized, exempted or rendered inconsistent by federal statute.

717. Limitations on Application of Article

This article is not intended to address the scope of practice of a dentist, physician and surgeon, or nurse licensed under this division, and nothing in this article shall be construed to restrict, expand, alter, or modify the existing scope of practice established by federal statute or regulation.

Article 10.5. Unprofessional Conduct

726. Sexual Abuse, Misconduct, or Relations with a Patient

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds

for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(Amended by Stats. 1993, c. 1072 (SB 743), § 1.)

Article 11. Professional Reporting

800. Central Files; Creation; Contents; Complaint Forms; Confidentiality

(a) The Medical Board of California, the Board of Dental Examiners, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nurse and Psychiatric Technician Examiners, the State Board of Optometry, the Veterinary Medical Board, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from such board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to (1) any conviction of a crime in this or any other state which constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement requiring the licensee or his or her insurer, to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this

section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information which the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

(Amended by Stats. 1994, c. 26 (AB 1807), § 15.5, eff. March 30, 1994; Stats. 1995, c. 5 (SB 158), § 1; Stats. 1995, c. 60 (SB 42), § 6, eff. July 6, 1995; Stats. 1995, c. 708 (SB 609), 1.5.)

801. Settlement or Arbitration Award; Report by Insurer; Consent of Insured

(a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), and (d)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement or arbitration award over thirty thousand dollars (\$30,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter

14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Board of Dental Examiners of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

(Amended by Stats. 1991, c. 1091 (AB 1487), § 2; Stats. 1991, c. 359 (AB 1332), § 6; Stats. 1994, c. 468 (AB 559), § 1; Stats. 1994, c. 1206 (SB 1775), § 8; Stats. 1995, c. (SB 158), § 2.)

802. Settlement or Arbitration Award; Report by Holder of Authority, Parties or Counsel; Public Offense, Fines

(a) Every settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a person who holds a license, certificate or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after any such written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall

himself or herself make such a complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in such compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement or arbitration award over thirty thousand dollars (\$30,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to such claim shall, within 30 days after any such written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of such arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he shall himself or herself make such a complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in such compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) Every settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a marriage, family, and child counselor or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990), who does not possess professional liability insurance as to that claim shall within 30 days after any such written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency which issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written

settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage, family, and child counselor or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in that compliance is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(Added by Stats. 1975, 2nd Sess., c. 1, p. 3950, § 2.3. Amended by Stats. 1979, c. 923, p. 3200, § 2; Stats. 1989, c. 398, § 2.)

803. Judgment Against Holder of License, Certificate or Other Authority; Reports to Issuing Agency and Medical Board; Release of Information to Public

(a) Within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court which rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report to the Medical Board of California as to any judgment in excess of thirty thousand dollars (\$30,000) of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received pursuant to subdivision (a) regarding felony convictions of, and judgments in excess of thirty thousand dollars (\$30,000) against, physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

(Added by Stats. 1993, c. 1267 (SB 916), § 4. Amended by Stats. 1995, c. 708 (SB 609), § 4.)

804. Reports to Agency; Form and Contents; Copies

(a) Any agency to whom reports are to be sent under Section 801, 801.1, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.

(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.

(d) Every professional liability insurer that makes a report under Section 801, or self-insured governmental agency that makes a report pursuant to Section 801.1, and has received a copy of any written patient medical or hospital records prepared by the treating physician or the staff of the treating physician or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the claim prompting the Section 801 or 801.1 report, or a copy of any depositions in the matter that discuss the care, treatment, or medical condition of the person, shall provide with the report copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California to the insurer, except when confidentiality is required by court order. If confidentiality is required by court order and, as a result, the insurer is unable to provide the records and depositions, documentation to that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability insurer or self-insured governmental agency shall

maintain the records and depositions referred to in this subdivision for at least one year from the date of the Section 801 or 801.1 report.

806. Statistical Report; Presentation to Legislature

Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon such records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including a summary of administrative and disciplinary action taken with respect to such reports and any recommendations for corrective legislation if the agency considers such legislation to be necessary.

Article 12. Insurance Fraud

810. False or Fraudulent Claims; Disciplinary Action

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.1 or 1871.4 of the Insurance Code.

(c) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

(Amended by Stats. 1991, c. 116 (SB 1218), § 1.)

Article 12.5. Mental Illness or Physical Illness

820. Examination; Report

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

(Added by Stats. 1982, c. 1183, p. 4216, § 1. Amended by Stats. 1989, c. 1104, § 1.7.)

821. Failure to comply with Order; Suspension or Revocation

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

822. Disposition Alternatives; Reinstatement

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

823. Procedures for Reinstatement; Terms and Conditions

Notwithstanding any other provisions of law, reinstatement of a licentiate against whom action has been taken pursuant to Section 822 shall be governed by the procedures in this article. In reinstating a certificate or license which has been revoked or suspended under Section 822, the licensing agency may impose terms and conditions to be complied with by the licentiate after the certificate or license has been reinstated. The authority of the licensing agency to impose terms and conditions includes, but is not limited to, the following:

(a) Requiring the licentiate to obtain additional professional training and to pass an examination upon the completion of the training.

(b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or any combination thereof to determine his or her present fitness to engage in the practice of his or her profession.

(c) Requiring the licentiate to submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the licensing agency. If the licensing agency requires the licentiate to submit to such an examination, the licensing agency shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons or psychologists of the licentiate's choice.

(d) Requiring the licentiate to undergo continuing treatment.

(e) Restricting or limiting the extent, scope or type of practice of the licentiate.

824. Alternative Provisions for Proceeding

The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

825. Licensing Agency

As used in this article with reference to persons holding licenses as physicians and surgeons, "licensing agency" means a panel of the Division of Medical Quality.

(Amended by Stats. 1993, c. 1267 (SB 916), § 9.)

826. Procedure; Law Governing

The proceedings under Sections 821 and 822 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall have all the rights and powers granted therein.

827. Closed Sessions

Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, the licensing agency may convene in closed session to consider any evidence relating to the licentiate's mental or physical illness obtained pursuant to the proceedings under Section 820. The licensing agency shall only convene in closed session to the extent that it is necessary to protect the privacy of a licentiate.

828. Confidentiality, Purgation, and Destruction of Records; Use in Subsequent Proceeding

If the licensing agency determines, pursuant to proceedings conducted under Section 820, that there is insufficient evidence to bring an action against the licentiate pursuant to Section 822, then all licensing agency records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential and are not subject to discovery or subpoena. If no further proceedings are conducted to determine the licentiate's fitness to practice during a period of five years from the date of the determination by the licensing agency of the proceeding pursuant to Section 820, then the licensing agency shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the licentiate by the licensing agency, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the respondent pursuant to the provisions of Section 11507.6 of the Government Code.

CHAPTER 1.5. EXEMPTION FROM LICENSURE

900. Health Care Practitioners Licensed in Another State; State of Emergency; Deploying of Practitioners

(a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities

of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

(f) For the purposes of this chapter, "health care practitioner" means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(g) For purposes of this chapter, "director" means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(Added by Stats. 1989, c. 97, § 2, eff. July 7, 1989.)

CHAPTER 3. CLINICAL LABORATORY TECHNOLOGY

Article 3. *Application of the Chapter*

1242.5. Unlicensed Laboratory Personnel Employed in Licensed Clinics or Hospitals; Vein, Arterial or Skin Punctures; Training

The department may by regulation authorize unlicensed laboratory personnel who are employed in clinical laboratories in licensed clinics or hospitals, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code, to perform venipuncture, arterial puncture, or skin puncture for the purposes of withdrawing blood or for test purposes, as defined by regulations established by the department. The department shall establish the minimum training required for such persons.

(Added by Stats. 1979, c. 176, p. 394, § 1. Amended by Stats. 1988, c. 1396, § 1, eff. Sept. 27, 1988.)

1242.6. Registered Nurses, Licensed Vocational Nurses, and Respiratory Care Practitioners; Arterial, Vein, or Skin Punctures; Authorization and Competency

(a) Any registered nurse licensed under the provisions of Chapter 6 (commencing with Section 2700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon or any licensed dentist.

(b) Any licensed vocational nurse licensed under the provisions of Chapter 6.5 (commencing with Section 2840) of Division 2 may perform

arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon, or any licensed dentist if prior thereto the licensed vocational nurse has been instructed by a physician and surgeon and has demonstrated competence to such physician and surgeon in the proper procedure to be employed when withdrawing blood, or has satisfactorily completed a prescribed course of instruction approved by the Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California or has demonstrated competence to the satisfaction of such board.

(c) Any respiratory care practitioner certified under the provisions of Chapter 8.3 (commencing with Section 3700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon.

(Added by Stats. 1973, c. 748, § 1. Amended by Stats. 1974, c. 838, p. 1803, § 1; Stats. 1975, c. 629, p. 1363, § 1; Stats. 1988, c. 1396, § 1.5, eff. Sept. 27, 1988.)

1245. Blood Gas Analysis

(a) Any individual may perform a blood gas analysis if all the following conditions exist:

(1) He or she has earned a high school diploma or equivalent, as determined by HFCA pursuant to CLIA.

(2) He or she performs the blood gas analysis in a clinic or a general acute care hospital, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code.

(3) He or she has been instructed by a physician and surgeon licensed in this state, who is in charge of a department of pulmonary physiology or clinical pathology in licensed clinics or hospitals, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code, in the proper procedure to be employed when performing a blood gas analysis.

(4) He or she performs the blood gas analysis under the direction and supervision of the physician and surgeon.

(5) He or she submits the analysis for interpretation to the physician and surgeon under whose direction and supervision he or she performed the analysis.

(b) After September 1, 1997, any person may perform a blood gas analysis classified as of high complexity under CLIA, if, in addition to the requirements of subdivision (a), he or she has earned an associate degree related to pulmonary function from an accredited institution as determined by HFCA pursuant to CLIA.

(c) Nothing contained in this section shall be construed as authorizing any individual, not otherwise authorized, to withdraw blood.

(d) Nothing contained in this section is applicable to a person licensed as a respiratory care practitioner under Chapter 8.3 (commencing with Section 3700). Those persons are authorized to perform those functions set forth in that chapter.

(Added by Stats. 1979, c. 176, p. 394, § 2. Amended by Stats. 1987, c. 839, § 2; Stats. 1995, c. 510 (SB 113), § 23.)

1246. Venipuncture or Skin Puncture by Unlicensed Person

Except as provided in Section 13354 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood for test purposes upon specific authorization from a licensed physician and surgeon provided that he meets all the following requirements:

(a) He works under the supervision of a person licensed under this chapter or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of such procedures.

(b) He has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

Article 3.5. Hemodialysis Training

1247.3. Treatment of Patients; Venipuncture and Arterial Puncture; Administration of Medications; Immediate Supervision of Home Treatment

The treatment of patients by a hemodialysis technician includes performing venipuncture and arterial puncture for the purpose of providing dialysis treatment for a patient. The treatment of patients includes the administration of local anesthetics, heparin, and sodium chloride solutions. The administration of these medications shall be pursuant to protocol established by the medical director of the hemodialysis clinic or unit and shall be under the immediate supervision of a licensed physician and surgeon or a licensed registered nurse. The administration of local anesthetics shall be limited to intradermal, subcutaneous, or topical administration. Hemodialysis technicians who treat patients in the home and are certified by the Board of Nephrology Examination for Nurses and Technicians are exempted from the requirements of immediate supervision until January 1, 1991.

(Added by Stats. 1987, c. 1297, § 4. Amended by Stats. 1989, c. 248, § 2, eff. July 31, 1989.)

CHAPTER 5. MEDICINE*Article 18. Corporations*

2406. Medical or Podiatry Corporation; Corporate Status; Regulatory Agency

A medical corporation or podiatry corporation is a corporation which is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical corporation only, physician assistants, are in compliance with the Moscone-Knox Professional Corporation Act, the

provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Division of Licensing.

(Amended by Stats. 1994, c. 26 (AB 1807), § 24, eff. March 30, 1994.)

CHAPTER 6.6. PSYCHOLOGISTS

Article 1. General Provisions

2908. Psychological Activities, Members of Other Professional Groups

Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational psychologists, marriage, family and child counselors, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer avocational or vocational self-improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrist," "psychometrics," or, "psychometry" or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.

Article 9. Psychological Corporations

2995. Corporate Status; Conditions; Regulatory Agency

A psychological corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officer, directors and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, marriage, family, and child counselors, licensed clinical social workers, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

With respect to a psychological corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Psychology of the Medical Board of California.

(Amended by Stats. 1990, c. 622 (SB 2720), § 6.)

CHAPTER 9. PHARMACY

Article 4. *Requirements for Prescriptions*

4072. Health Care Facilities; Oral or Electronic Transmission of Prescription

(a) Notwithstanding any other provision of law, a pharmacist, registered nurse, licensed vocational nurse, licensed psychiatric technician, or other healing arts licentiate, if so authorized by administrative regulation, who is employed by or serves as a consultant for a licensed skilled nursing, intermediate care or other health care facility, may orally or electronically transmit to the furnisher a prescription lawfully ordered by a person authorized to prescribe drugs or devices pursuant to Sections 4040 and 4070. The furnisher shall record the name of the person who transmits the order. This section shall not apply to orders for Schedule II controlled substances.

(b) In enacting this section, the Legislature recognized and affirms the role of the Department of Health Services in regulating drug order processing requirements for licensed health care facilities as set forth in Title 22 of the California Code of Regulations as they may be amended from time to time.

(Added by Stats. 1996, c. 890 (AB 2802), § 3.)

DIVISION 7. GENERAL BUSINESS RELATIONS

PART 3. REPRESENTATIONS TO THE PUBLIC

CHAPTER 1. ADVERTISING

Article 1. *False Advertising in General*

17500. False or Misleading Statements

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated by any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Amended by Stats. 1979, c. 492, p. 1660, § 1.)

17500.1. Rules Restricting or Prohibiting Advertising Proscribed; State Bar Exception

Notwithstanding any other provision of law, no trade or professional association, or state agency, state board, or state commission within the Department of Consumer Affairs shall enact any rule, regulation, or code of professional ethics which shall restrict or prohibit advertising by any commercial or professional person, firm, partnership or corporation which does not violate the provisions of Section 17500 of the Business and Professions Code, or which is not prohibited by other provisions of law.

The provisions of this section shall not apply to any rules or regulations heretofore or hereafter formulated pursuant to Section 6076.

(Amended by Stats. 1979, c. 653, p. 2013, § 12.)

17506.5. Board within the Department of Consumer Affairs; Local Consumer Affairs Agency; Definitions

As used in this chapter:

(a) "Board within the Department of Consumer Affairs" includes any commission, bureau, division, or other similarly constituted agency within the Department of Consumer Affairs.

(b) "Local consumer affairs agency" means and includes any city or county body which primarily provides consumer protection services.

(Amended by Stats. 1979, c. 897, p. 3103, § 4.)

CIVIL CODE

DIVISION 1. PERSONS PART 2. PERSONAL RIGHTS

43.8. Immunity from Liability for Communication on Evaluation of Practitioner of Healing Arts

In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, veterinary hospital staff, professional society, medical, dental, podiatric school, or veterinary school, professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under Section 12529 of the Government Code, peer review committee, quality assurance committees established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code, or underwriting committee described in Section 43.7 when such communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts. The immunities afforded by this section and by Section 43.7 shall not affect the availability of any absolute privilege which may be afforded by Section 47.

(Amended by Stats. 1982, c. 234, p. 767, § 3, eff. June 2, 1982; Stats. 1982, c. 705, p. 2863, § 2; Stats. 1983, c. 1081, § 2; Stats. 1984, c. 515, § 4; Stats. 1983, c. 1081, § 2, operative Jan. 1, 1990; Stats. 1990, c. 1597 (SB 2375), § 30.)

47. Privileged Publication or Broadcast

A privileged publication or broadcast is one made:

- (a) In the proper discharge of an official duty.
- (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the

subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded *lis pendens* is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, the prospective employer. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d)(1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

(Amended by Stats. 1990, c. 1491 (AB 3765), § 1; Stats. 1991, c. 432 (AB 529), § 1; Stats. 1992, c. 615 (SB 1804), § 1; Stats. 1994, c. 364 (AB 2778), § 1; Stats. 1994, c. 700 (SB 1457), § 2.5; Stats. 1996, c. 1055 (SB 1540), § 2.)

CORPORATIONS CODE

TITLE 1. CORPORATIONS

DIVISION 3. CORPORATIONS FOR SPECIFIC PURPOSES

PART 4. PROFESSIONAL CORPORATIONS

13401. Definitions

As used in this part:

(a) "Professional services" means any type of professional services which may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code or the Chiropractic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the State Board of Pharmacy, the Veterinary Medical Board, the Board of Architectural Examiners, the Certified Court Reporters Board, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

(d) "Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code or the Chiropractic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

(e) "Disqualified person" means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services which the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

(Amended by Stats. 1991, c. 566 (AB 776), § 20; Stats. 1992, c. 1289 (AB 2743), § 50; Stats. 1993, c. 910 (SB 687), § 2; Stats. 1993, c. 955 (SB 312), § 5.3; Stats. 1994, c. 1010 (SB 2053), § 66.1; Stats. 1994, c. 26 (AB 1807), § 225, eff. March 30, 1994; Stats. 1995, c. 60 (SB 42), § 43, eff. July 6, 1995.)

13401.5. Licensed Persons Who May Be Shareholders, Officers, Directors or Professional Employees; Conditions

Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, direc-

tors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by these licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of these licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed podiatrists.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage, family, and child counselors.

(6) Licensed clinical social workers.

(7) Licensed physicians' assistants.

(8) Licensed chiropractors.

(b) Podiatry corporation.

(1) Licensed physicians and surgeons.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed chiropractors.

(c) Psychological corporation.

(1) Licensed physicians and surgeons.

(2) Licensed podiatrists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage, family, and child counselors.

(6) Licensed clinical social workers.

(7) Licensed chiropractors.

(d) Speech pathology corporation.

(1) Licensed audiologist.

(e) Audiology corporation.

(1) Licensed speech pathologist.

(f) Nursing corporation.

(1) Licensed physicians and surgeons.

(2) Licensed podiatrists.

(3) Licensed psychologists.

(4) Licensed optometrists.

(5) Licensed marriage, family, and child counselors.

(6) Licensed clinical social workers.

(7) Licensed physicians' assistants.

(8) Licensed chiropractors.

(g) Marriage, family, and child counseling corporation.

(1) Licensed physicians and surgeons.

(2) Licensed psychologists.

(3) Licensed clinical social workers.

- (4) Registered nurses.
- (5) Licensed chiropractors.
- (h) Licensed clinical social worker corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Licensed marriage, family, and child counselors.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (i) Physicians' assistants corporation.
- (1) Licensed physicians and surgeons.
- (2) Registered nurses.
- (j) Optometric corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed podiatrists.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (k) Chiropractic corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed podiatrists.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed optometrists.
- (6) Licensed marriage, family, and child counselors.
- (7) Licensed clinical social workers.
- (l) Acupuncture corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed podiatrists.
- (3) Licensed psychologists.
- (4) Licensed registered nurses.
- (5) Licensed optometrists.
- (6) Licensed marriage, family, and child counselors.
- (7) Licensed clinical social workers.
- (8) Licensed physician assistants.
- (9) Licensed chiropractors.

(Amended by Stats. 1994, c. 26 (AB 1807), § 226, eff. March 30, 1994; Stats. 1994, c. 815 (SB 1279), § 2.)

GOVERNMENT CODE

TITLE 1. GENERAL

DIVISION 7. MISCELLANEOUS

CHAPTER 3.5. INSPECTION OF PUBLIC RECORDS

6250. Legislative Findings and Declarations

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

(Added by Stats. 1968, c. 1473, p. 2946, § 39. Amended by Stats. 1970, c. 575, p. 1150, § 1.)

6251. Short Title

This chapter shall be known and may be cited as the California Public Records Act.

(Added by Stats. 1968, c. 1473, p. 2946, § 39.)

6252. Definitions

As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit organizations of local governmental agencies and officials which are supported solely by public funds.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(f) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(Amended by Stats. 1981, c. 968, p. 3680, § 1; Stats. 1991, c. 181 (AB 788), § 1; Legislative declaration of Stats. 1996, c. 57 (SB 141), § 30, relating to the rendition of professional services by a limited liability company.)

6253. Public Records Open to Inspection; Time; Guidelines and Regulations Governing Procedure

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

- Department of Motor Vehicles
- Department of Consumer Affairs
- Department of Transportation
- Department of Real Estate
- Department of Corrections
- Department of the Youth Authority
- Department of Justice
- Department of Insurance
- Department of Corporations
- Secretary of State
- State Air Resources Board
- Department of Water Resources
- Department of Parks and Recreation
- San Francisco Bay Conservation and Development Commission
- State Board of Equalization
- State Department of Health Services
- Employment Development Department
- State Department of Social Services
- State Department of Mental Health
- State Department of Developmental Services
- State Department of Alcohol and Drug Abuse
- Office of Statewide Health Planning and Development
- Public Employees' Retirement System
- Teacher's Retirement Board
- Department of Industrial Relations
- Department of General Services
- Department of Veterans Affairs
- Public Utilities Commission
- California Coastal Commission
- State Water Quality Control Board
- San Francisco Bay Area Rapid Transit District
- All regional water quality control boards
- Los Angeles County Air Pollution Control District
- Bay Area Air Quality Management District
- Golden Gate Bridge, Highway and Transportation District

Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in subdivision (a).

(Added by Stats. 1968, c. 1473, p. 2946, § 39. Amended by Stats. 1973, c. 664, p. 1215, § 1; Stats. 1974, c. 544, p. 1249, § 7; Stats. 1975, c. 957, p. 2140, § 6; Stats. 1977, c. 1252, p. 4325, § 96, operative July 1, 1978; Stats. 1979, c. 373, § 120; Stats. 1983, c. 826, § 1; Stats. 1988, c. 409, § 1; Gov. Reorg. Plan No. 1 of 1991, § 70, eff. July 17, 1991.)

6253.1. Adoption of Requirement for Greater Access

Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.

(Added by Stats. 1981, c. 968, p. 3680, § 2.)

6254. Exemption of Particular Records

Except as provided in Section 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

(Amended by Stats. 1995, C. 438 (AB 985), § 1; Stats. 1995, c. 777 (AB 958), § 2; Stats. 1995, c. 778 (SB 1059), § 1.5; Stats. 1995, c. 778 (SB 1059), § 1.5, operative July 1, 1996; Stats. 1996, c. 1075 (SB 1444), § 11.)

6254.3. State, School District and County Office of Education Employees; Home Address and Phone Number as Public Records; Disclosure

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

(Added by Stats. 1984, c. 1657, § 1, amended by Stats. 1992, c. 463 (AB 1040), § 1, eff. Aug. 10, 1992.)

6254.5. Disclosures of Public Records; Waiver of Exemptions; Application of Section

Text of section operative until July 1, 1997

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Superintendent of Banks under Section 1909 of the Financial Code or by the Savings and Loan Commissioner under Section 8009 of the Financial Code or by the Commissioner of Corporations under Section 18396 of the Financial Code.

(Added by Stats. 1981, c. 968, p. 3680, § 3. Amended by Stats. 1983, c. 101, § 57; Stats. 1987, c. 1453, § 5; Stats. 1993, c. 469 (AB 729), § 11; Stats. 1995, c. 480 (AB 1482), § 199, eff. Oct. 2, 1995, operative Oct. 2, 1995.)

6254.5. Disclosures of Public Records; Waiver of Exemptions; Application of Section

Text of section operative July 1, 1997

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

(Added by Stats. 1981, c. 968, p. 3680, § 3. Amended by Stats. 1983, c. 101, § 57; Stats. 1987, c. 1453, § 5; Stats. 1993, c. 469 (AB 729), § 11; Stats. 1995, c. 480 (AB 1482), § 199, eff. Oct. 2, 1995, operative Oct. 2, 1995; Stats. 1996, c. 1064 (AB 3351), § 780, operative July 1, 1997.)

6254.8. Employment Contracts Between State or Local Agency and Public Official or Employee; Public Record

Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

(Added by Stats. 1974, c. 1198, p. 2588, § 1.)

6256. Copies of Records; Determination on Compliance with Request; Notice; Reasons

Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

Each agency, upon any request for a copy of records shall determine within 10 days after the receipt of such request whether to comply with the request and shall immediately notify the person making the request of such determination and the reasons therefor.

(Added by Stats. 1968, c. 1473, p. 2947, § 39. Amended by Stats. 1970, c. 575, p. 1151, § 3; Stats. 1981, c. 968, p. 3680, § 3.1.)

6256.1. Extension of Time for Determination in Unusual Circumstances; Notices

In unusual circumstances, as specified in this section, the time limit prescribed in Section 6256 may be extended by written notice by the head of the agency to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than 10 working days.

As used in this section "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(Added by Stats. 1981, c. 968, p. 3680, § 3.2.)

6256.2. Delay in Access; Prohibition; Notification of Denial; Name of Person Responsible

Nothing in this chapter shall be construed to permit an agency to delay access for purposes of inspecting public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(Added by Stats. 1981, c. 968, p. 3680, § 3.3.)

6257. Request for Copy; Prompt Availability; Fee; Reasonably Segregable Portion After Deletion of Exempt Portions

Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law.

(Added by Stats. 1981, c. 968, p. 3680, § 3.5.)

6258. Proceedings to Enforce Right to Inspect or to Receive Copy of Record

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

(Added by Stats. 1968, c. 1473, p. 2948, § 39. Amended by Stats. 1970, c. 575, p. 1151, § 4; Stats. 1990, c. 908 (SB 2272), § 1.)

6259. Order of Court; Review; Contempt; Court Costs and Attorney Fees

(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should

not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

(Added by Stats. 1968, c. 1473, p. 2948, § 39. Amended by Stats. 1975, c. 1246, p. 3212, § 9; Stats. 1984, c. 802, § 1; Stats. 1990, c. 908 (SB 2272), § 2; Stats. 1993, c. 926 (AB 2205), § 10.)

6260. Effect of Chapter on Prior Rights and Proceedings

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

(Added by Stats. 1968, c. 1473, p. 2948, § 39. Amended by Stats. 1976, c. 314, p. 629, § 2.)

6262. Exemption of Records of Complaints to, or Investigations by, Any State or Local Agency for Licensing Purposes; Application to District Attorney

The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

(Added by Stats. 1979, c. 601, 2.)

6263. District Attorney; Inspection or Copying of Nonexempt Public Records

A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

(Added by Stats. 1979, c. 601, § 3.)

6264. Order to Allow District Attorney to Inspect or Copy Records

The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

(Added by Stats. 1979, c. 601, § 4.)

6265. Disclosure of Records to District Attorney; Status of Records

Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

(Added by Stats. 1979, c. 601, § 5.)

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA

DIVISION 3. EXECUTIVE DEPARTMENT

Article 9. Meetings

BAGELEY-KEENE OPEN MEETING ACT

11120. Public Policy; Legislative Finding and Declaration; Citation of Article

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their

public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1980, c. 1284, p. 4333, § 4; Stats. 1981, c. 968, p. 3683, § 4.)

11121. State Body

Text of section operative until July 1, 1997

As used in this article "state Body" means every state board, or commission, or similar multimember body of the state that is required by law to conduct official meetings and every commission created by executive order, but does not include:

- (a) State agencies provided for in Article VI of the California Constitution.
 - (b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).
 - (c) State agencies provided for in Article IV of the California constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).
 - (d) State agencies when they are conducting proceedings pursuant to Section 3596.
 - (e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.
 - (f) State agencies provided for in Section 11770.5 of the Insurance Code.
- (Amended by Stats. 1996, c. 1023 (SB 1497), § 88, eff. Sept. 29, 1996.)

11121. State Body

Text of section operative July 1, 1997

As used in this article "state body" means every state board, or commission, or similar multimember body of the state that is required by law to conduct official meetings and every commission created by executive order, but does not include:

- (a) State agencies provided for in Article VI of the California Constitution.
- (b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).
- (c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).
- (d) State agencies when they are conducting proceedings pursuant to Section 3596.
- (e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.
- (f) State agencies provided for in Section 11770.5 of the Insurance Code.

(g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1980, c. 515, § 1; Stats. 1981, c. 968, p. 3683, § 5; Stats. 1984, c. 193, § 38; Stats. 1996, c. 1023 (SB 1497), § 88, eff. Sept. 29, 1996; Stats. 1996, c. 1064 (AB 3351), § 783.1, operative July 1, 1997.)

11121.2. State Body; Multimember Body Which Exercises Authority by Delegation from State Body

As used in this article, "state body" also means any board, commission, committee, or similar multimember body which exercises any authority of a state body delegated to it by that state body.

(Added by Stats. 1981, c. 968, p. 3684, § 5.2.)

11121.7. State Body; Representative of State Body

As used in this article, "state body" also means any board, commission, committee, or similar multimember body on which a member of a body which is a state body pursuant to Section 11121, 11121.2, or 11121.5 serves in his or her official capacity as a representative of such state body and which is supported, in whole or in part, by funds provided by the state body, whether such body is organized and operated by the state body or by a private corporation.

(Added by Stats. 1980, c. 1284, p. 4333, § 5. Amended by Stats. 1981, c. 968, p. 3685, § 6.)

11121.8. State Body; Advisory Bodies

As used in this article, "state body" also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(Added by Stats. 1981, c. 968, p. 3684, § 7.)

11121.9. Provision of Copy of Article to Members of State Body

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

(Added by Stats. 1980, c. 1284, p. 4334, § 6. Amended by Stats. 1981, c. 714, p. 2659, § 175; Stats. 1981, c. 968, p. 3685, § 7.1.)

11122. Action Taken

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1981, c. 968, p. 3685, § 7.3.)

11123. Meetings; Attendance; Teleconference Option

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b)(1) Nothing in this article shall be construed to prohibit a state body from holding an open or closed meeting by teleconference if the convening at one location of a quorum of the state body is difficult or impossible, subject to all of the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public.

(D) All votes taken during a teleconferenced meeting shall be by roll call.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5 of the Government Code.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a conference of individuals in different locations, connected by electronic means, through either audio or video, or both.

(3) This subdivision shall not be operative and shall have no effect on and after January 1, 1998.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1981, c. 968, p. 3685, § 7.5; Stats. 1994, c. 1153 (AB 3467), § 1.)

11124. Conditions to Attendance

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1981, c. 968, p. 3685, § 8.)

11124.1. Tape Recording of Proceedings

Any person attending an open and public meeting of the state body shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the state body that such recording constitutes, or would constitute, a disruption of the proceedings.

(Added by Stats. 1980, c. 1284, p. 4334, § 7. Amended by Stats. 1981, c. 968, p. 3685, § 9.)

11125. Notice of Meeting

(a) The state body shall provide notice of its meeting to any person who requests such notice in writing. Notice shall be given at least 10 days in

advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

(c) The notice of a meeting of an advisory body, which is a state body as defined in Section 11121.8, shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) Notice of a meeting of a state body which complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1973, c. 1126, p. 2291, § 1; Stats. 1975, c. 708, p. 1695, § 1; Stats. 1979, c. 284, § 1, eff. July 24, 1979; Stats. 1981, c. 968, p. 3685, § 10.)

11125.1. Agendas and Other Writings Distributed for Discussion or Consideration at Public Meetings; Public Records; Inspection; Closed Sessions

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) as soon as distributed, and shall be made available pursuant to Sections 6253 and 6256. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writings described in subdivisions (b), (c), and (d) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 625) of Division 7 of Title 1), and shall not be construed to exempt from public inspection any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

(Added by Stats. 1975, c. 959, p. 2238, § 4. Amended by Stats. 1980, c. 1284, p. 4334, § 8; Stats. 1981, c. 968, p. 3686, § 10.1.)

11125.2. Appointment, Employment or Dismissal of Public Employees; Closed Sessions; Public Report

Any state body shall report publicly at a subsequent public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

(Added by Stats. 1980, c. 1284, p. 4335, § 9. Amended by Stats. 1981, c. 968, p. 3687, § 10.3.)

11125.5. Emergency Meetings

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity which severely impairs public health or safety, or both.

(2) Crippling disaster which severely impairs public health or safety, or both.

(d) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(e) This section is not applicable to hearings conducted by the State Board of Control pursuant to Sections 13963 and 13963.1.

(f) This section is not applicable to agenda items which involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

(Added by Stats. 1993, c. 1289 (SB 367), § 2. Amended by Stats. 1995, c. 938 (SB 523), § 13, operative July 1, 1997.)

11126. Closed Sessions

(a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee shall include a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(4) Prevent any state body from holding a closed session to consider matters affecting the national security.

(5) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(6) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(7) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(8)(A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(9) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(10) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(11) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education, or any committee advising the State Board of Education, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph 8 relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumer-

ated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(e)(1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(3) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(4)(A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(5)(A) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(B) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(C) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(D) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(6) Prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article shall not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters

pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1968, c. 1272, p. 2396, § 1; Stats. 1970, c. 346, p. 741, § 5; Stats. 1972, c. 431, p. 791, § 43; Stats. 1972, c. 1010, p. 1872, § 63, eff. Aug. 17, 1972, operative July 1, 1972; Stats. 1974, c. 1254, p. 2713, § 1; Stats. 1974, c. 1539, p. 3525, § 1; Stats. 1975, c. 197, p. 570, § 1; Stats. 1975, c. 959, p. 2238, § 5; Stats. 1977, c. 730, p. 2318, § 5, eff. Sept. 12, 1977; Stats. 1980, c. 1197, p. 4043, § 1; Stats. 1980, c. 1284, p. 4338, § 11; Stats. 1981, c. 180, p. 1086, § 1; Stats. 1981, c. 968, p. 3688, § 12; Stats. 1982, c. 454, p. 1842, § 40; Stats. 1983, c. 143, § 187; Stats. 1984, c. 678, § 1; Stats. 1984, c. 1284, § 4; Stats. 1985, c. 186, § 1; Stats. 1985, c. 1091, § 1; Stats. 1986, c. 575, § 1; Stats. 1987, c. 1320, § 2; Stats. 1988, c. 1448, § 29; Stats. 1989, c. 177, § 2; Stats. 1989, c. 882, § 2; Stats. 1989, c. 1360, § 52; Stats. 1989, c. 1427, § 1, eff. Oct. 2, 1989, operative Jan. 1, 1990; Stats. 1991, c. 788 (AB 1440), § 4; Stats. 1992, c. 1050 (AB 2987), § 17; Stats. 1994, c. 26 (AB 1807), § 230, eff. March 30, 1994; Stats. 1994, c. 422 (AB 2589), § 15.5, eff. Sept. 7, 1994; Stats. 1994, c. 845 (SB 1316), § 1; Stats. 1995, c. 975 (AB 265), § 3; Stats. 1996, c. 1041 (AB 3358), § 2.)

11126.1. Record of Topics Discussed and Decisions Made at Closed Sessions; Availability

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

(Added by Stats. 1980, c. 1284, p. 4340, § 12. Amended by Stats. 1981, c. 968, p. 3691, § 13.)

11126.3. Statement of Reasons and Agenda for Closed Session; Scope of Session; Notice of Meeting; Announcement of Additional Pending Litigation; Unnecessary Disclosures

(a) Prior to holding any closed session, the state body shall state the general reason or reasons for the closed session, and cite the specific statutory authority, including the particular section, subdivision, and paragraph under which the session is being held. If the session is closed pursuant to paragraph (1) of subdivision (q) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its statement.

(c) The statement shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the closed session agenda has been published in compliance with this section, any additional pending litigation (under subdivision (q) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

(Added by Stats. 1980, c. 1284, p. 4341, § 13. Amended by Stats. 1981, c. 968, p. 3692, § 14; Stats. 1987, c. 1320, § 3.)

11126.5. Disorderly Conduct of General Public During Meeting; Clearing of Room

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

(Added by Stats. 1970, c. 1610, p. 3385, § 1. Amended by Stats. 1981, c. 968, p. 3692, § 15.)

11126.7. Fees

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

(Added by Stats. 1980, c. 1284, p. 4341, § 14. Amended by Stats. 1981, c. 968, p. 3692, § 16.)

11127. Application of Article

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1981, c. 968, p. 3692, § 17.)

11128. Time of Closed Session

Each closed session of a state body shall be held only during a regular or special meeting of the body.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1980, c. 1284, p. 4341, § 15; Stats. 1981, c. 968, p. 3692, § 18.)

11129. Continuance; Posting Notice

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body which is noticed pursuant to Section 11125. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1981, c. 968, p. 3692, § 19.)

11130. Actions to Prevent Violations or Determine Applicability of Article

Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to actions or threatened future action by members of the state body.

(Added by Stats. 1967, c. 1656, p. 4026, § 122. Amended by Stats. 1969, c. 494, p. 1106, § 1; Stats. 1981, c. 968, p. 3693, § 20.)

11130.3. Judicial Determination Action by State Body in Violation of Section 11123 or 11125 Null and Void; Action by Interested Person; Grounds

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 30 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

(Added by Stats. 1985, c. 936, § 1.)

11130.5. Court Costs and Attorney Fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

(Added by Stats. 1975, c. 959, p. 2240, § 6. Amended by Stats. 1981, c. 968, p. 3693, § 21; Stats. 1985, c. 936, § 2.)

11130.7. Violations; Misdemeanor

Each member of a state body who attends a meeting of such body in violation of any provision of this article, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

(Added by Stats. 1980, c. 1284, p. 4341, § 16. Amended by Stats. 1981, c. 968, p. 3693, § 22.)

11131. Use of Facility Allowing Discrimination; State Agency

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

(Added by Stats. 1970, c. 383, p. 798, § 1. Amended by Stats. 1981, c. 968, p. 3693, § 23.)

11132. Closed Session by State Body Prohibited

Except as expressly authorized by this article, no closed session may be held by any state body.

(Added by Stats. 1987, c. 1320, § 4.)

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA

DIVISION 3. EXECUTIVE DEPARTMENT

PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

CHAPTER 6. DISCRIMINATION PROHIBITED

Article 1. Unlawful Practices, Generally

12944. Licensing Boards; Unlawful Acts Based on Examinations and Qualifications; Determination of Unlawfulness; Inquiries; Reasonable Accommodations; Records

(a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing which has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, or physical disability, mental disability, unless such practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and

rely on such examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by such examination or by a license issued in reliance on such examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, or age, or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because such person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of such applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency which has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

(Amended by Stats. 1992, c. 912 (AB 1286), § 6; Stats. 1992, c. 913 (AB 1077), § 24.)

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA
DIVISION 3. EXECUTIVE DEPARTMENT
PART 5.5. DEPARTMENT OF GENERAL SERVICES
CHAPTER 7. PRINTING
Article 6. Distribution of State Publications

14911. Mailing Lists; Annual Correction

Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate post card or letter to each person on the mailing list. The name of any person who does not respond to such letter or post card, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The responses of those desiring to be on the mailing list shall be retained by these agencies for one year.

(Added by Stats. 1965, c. 371, p. 1565, § 179.)

TITLE 3. GOVERNMENT OF COUNTIES
DIVISION 2. OFFICERS
PART 3. OTHER OFFICERS
CHAPTER 1. DISTRICT ATTORNEY
Article 1. Duties as Public Prosecutor

26509. Consumer Fraud Investigations; Access to Complaints and Investigations by Certain State Agencies

(a) Notwithstanding any other provision of law, including any provision making records confidential, and including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the district attorney shall be given access to, and may make copies of, any complaint against a person subject to regulation by a consumer-oriented state agency and any investigation of the person made by the agency, where that person is being investigated by the district attorney regarding possible consumer fraud.

(b) Where the district attorney does not take action with respect to the complaint or investigation, the material shall remain confidential.

(c) Where the release of the material would jeopardize an investigation or other duties of a consumer-oriented state agency, the agency shall have discretion to delay the release of the information.

(d) As used in this section, a consumer-oriented state agency is any state agency which regulates the licensure, certification, or qualification of persons to practice a profession or business within the state, where the regulation is for the protection of consumers who deal with the professionals or businesses. It includes, but is not limited to, all of the following:

- (1) The Board of Dental Examiners of California.
- (2) The Medical Board of California.
- (3) The State Board of Optometry.
- (4) The California State Board of Pharmacy.

- (5) The Veterinary Medical Board.
- (6) The State Board of Accountancy.
- (7) The California State Board of Architectural Examiners.
- (8) The State Board of Barbering and Cosmetology.
- (9) The State Board of Registration for Professional Engineers.
- (10) The Contractors' State License Board.
- (11) The State Board of Funeral Directors and Embalmers.
- (12) The Structural Pest Control Board.
- (13) The Bureau of Home Furnishings and Thermal Insulation.
- (14) The Board of Registered Nursing.
- (15) The State Board of Fabric Care.
- (16) The Board of Chiropractic Examiners.
- (17) The Board of Behavioral Science Examiners.
- (18) The State Athletic Commission.
- (19) The Cemetery Board.
- (20) The State Board of Guide Dogs for the Blind.
- (21) The Bureau of Collection and Investigative Services.
- (22) The Court Reporters Board of California.
- (23) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
- (24) The California State Board of Landscape Architects.
- (25) The Osteopathic Medical Board of California.
- (26) The Division of Investigation.
- (27) The Bureau of Automotive Repair.
- (28) The State Board of Registration for Geologists and Geophysicists.
- (29) The State Board of Nursing Home Administrators.
- (30) The Department of Alcoholic Beverage Control.
- (31) The Department of Insurance.
- (32) The Public Utilities Commission.
- (33) The State Department of Health Services.
- (34) The New Motor Vehicle Board.

(Amended by Stats. 1988, c. 1448, § 30; Stats. 1989, c. 886, § 84; Gov. Reorg. Plan No. 1 of 1991, § 87, eff. July 17, 1991; Stats. 1991, c. 359 (AB 1332), § 35; Stats. 1994, c. 26 (AB 1807), § 233, eff. March 30, 1994; Stats. 1994, c. 1275 (SB 2101), § 55; Stats. 1995, c. 60 (SB 42), § 46, eff. July 6, 1995.)

HEALTH AND SAFETY CODE

DIVISION 2. LICENSING PROVISION

CHAPTER 1. CLINICS

Article 1. Definitions and General Provisions

1204. Clinic Eligible for Licensure, Primary Care Clinics and Specialty Clinics; Classes as Defined Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) Only the following defined classes of primary care clinics shall be eligible for licensure:

(1) A "community clinic" means a clinic operated by a tax-exempt non-profit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(2) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

(Amended by Stats. 1992, c. 457 (SB 1593), § 1.)

1204.3. Alternative Birth Center Specialty Clinics; License Requirements

(a) An alternative birth center that is licensed as an alternative birth center specialty clinic pursuant to paragraph (4) of subdivision (b) of Section 1204 shall, as a condition of licensure, and a primary care clinic licensed pursuant to subdivision (a) of Section 1204 that provides services as an alternative birth center shall, meet all of the following requirements:

(1) Be a provider of comprehensive perinatal services as defined in Section 14134.5 of the Welfare and Institutions Code.

(2) Maintain a quality assurance program.

(3) Meet the standards for certification established by the National Association of Childbearing Centers, or at least equivalent standards as determined by the state department.

(4) In addition to standards of the National Association of Childbearing Centers regarding proximity to hospitals and presence of attendants at births, meet both of the following conditions:

(A) Be located in proximity, in time and distance, to a facility with the capacity for management of obstetrical and neonatal emergencies, including the ability to provide cesarean section delivery, within 30 minutes from time of diagnosis of the emergency.

(B) Require the presence of at least two attendants at all times during birth, one of whom shall be either a physician and surgeon or a certified nurse-midwife.

(5) Have a written policy relating to the dissemination of the following information to patients:

(A) A summary of current state laws requiring child passenger restraint systems to be used when transporting children in motor vehicles.

(B) A listing of child passenger restraint system programs located within the county, as required by Section 27360 of the Vehicle Code or Section 27362 of that code.

(C) Information describing the risks of death or serious injury associated with the failure to utilize a child passenger restraint system.

(b) The state department shall issue a permit to a primary care clinic licensed pursuant to subdivision (a) of Section 1204 certifying that the primary care clinic has met the requirements of this section and may provide services as an alternative birth center. Nothing in this section shall be construed to require that a licensed primary care clinic obtain an additional license in order to provide services as an alternative birth center.

(c)(1) Notwithstanding subdivision (a) of Section 1206, no place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, shall be represented or otherwise held out to be an alternative birth center licensed by the state unless it meets the requirements of this section.

(2) Nothing in this subdivision shall be construed to prohibit licensed health care practitioners from providing birth related services, within the scope of their license, in a place or establishment described in paragraph (1).

(Added by Stats. 1992, c. 457 (SB 1593), § 2. Amended by Stats. 1995, c. 512 (SB 503), § 2.)

CHAPTER 2. HEALTH FACILITIES

Article 1. General

1250. Definitions

As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

A "general acute care hospital" includes a "rural general acute care hospital". However, a "rural general acute care hospital" shall not be required by the department to provide surgery and anesthesia services. A "rural general acute care hospital" shall meet either of the following conditions:

(1) The hospital meets criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled--nursing" means a facility with a capacity of four to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i)(1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than six beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4)(A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, home-like environment.

(j)(1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency that, as determined by the state department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the California Department of Corrections from obtaining a correctional treatment center license at these sites.

(k) "Nursing facility" means a facility that is certified to participate as a provider of care in the federal medicaid program under Title XIX of the federal Social Security Act and is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(l) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

(Amended by Stats. 1990, c. 1227 (AB 3413), § 1, eff. Sept. 24, 1990; Stats. 1990, c. 1329 (SB 1524), § 3.5, eff. Sept. 26, 1990; Stats. 1992, c. 697 (SB 1559), § 11; Stats. 1992, c. 1163 (SB 1570), § 1; Stats. 1992, c. 1164 (SB 1003), § 1; Stats. 1992, c. 1369 (AB 3027), § 5, eff. Oct. 27, 1992, operative Jan. 1, 1993; Stats. 1993, c. 589 (AB 2211), § 84; Stats. 1993, c. 70 (SB 86), § 7, eff. June 30, 1993; Stats. 1993, c. 930 (SB 560), § 1; Stats. 1993, c. 931 (AB 972), § 1; Stats. 1993, c. 932 (SB 910), § 1, eff. Oct. 8, 1993; Stats. 1993, c. 932 (SB 910), § 1.7, eff. Oct. 8, 1993, operative Jan. 1, 1994; Stats. 1995, c. 749 (AB 1177), § 6, eff. Oct. 10, 1995.)

1257.7. Security and Safety Assessment; Development of Security Plan; Security Personnel; Assault and Battery Reports to Law Enforcement; Liability; Violation; Penalty

(a) By July 1, 1995, all hospitals licensed pursuant to subdivisions (a), (b), and (f) of Section 1250 shall conduct a security and safety assessment and, using the assessment, develop a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. The security and safety assessment shall examine trends of aggressive or violent behavior at the facility. These hospitals shall track incidents of aggressive or violent behavior as part of the quality assessment and improvement program and for the purposes of developing a security plan to deter and manage further aggressive or violent acts of a similar nature. The plan may include, but shall not be limited to, security considerations relating to all of the following:

- (1) Physical layout.
- (2) Staffing.
- (3) Security personnel availability.
- (4) Policy and training related to appropriate responses to violent acts.

In developing this plan, the hospital shall consider any guidelines or standards on violence in health care facilities issued by the state department, the Division of Occupational Safety and Health, and the federal Occupational Safety and Health Administration. As part of the security plan, a hospital shall adopt security policies including, but not limited to, personnel training policies designed to protect personnel, patients, and visitors from aggressive or violent behavior.

(b) The individual or members of a hospital committee responsible for developing the security plan shall be familiar with all of the following:

- (1) The role of security in hospital operations.
- (2) Hospital organization.
- (3) Protective measures, including alarms and access control.
- (4) The handling of disturbed patients, visitors, and employees.
- (5) Identification of aggressive and violent predicting factors.
- (6) Hospital safety and emergency preparedness.
- (7) The rudiments of documenting and reporting crimes, including, by way of example, not disturbing a crime scene.

(c) The hospital shall have sufficient personnel to provide security pursuant to the security plan developed pursuant to subdivision (a). Persons regularly assigned to provide security in a hospital setting shall be trained regarding the role of security in hospital operations, including the identification of aggressive and violent predicting factors, and management of violent disturbances.

(d) Any act of assault, as defined in Section 240 of the Penal Code, or battery, as defined in Section 242 of the Penal Code, that results in injury or involves the use of a firearm or other dangerous weapon, against any on-duty hospital personnel shall be reported to the local law enforcement agency within 72 hours of the incident. Any other act of assault, as defined in Section 240 of the Penal Code, or battery as defined in Section 242 of the Penal Code,

against any on-duty hospital personnel may be reported to the local law enforcement agency within 72 hours of the incident. No health facility or employee of a health facility who reports a known or suspected instance of assault or battery pursuant to this section shall be civilly or criminally liable for any report required by this section. No health facility or employee of a health facility who reports a known or suspected instance of assault or battery that is authorized, but not required, by this section, shall be civilly or criminally liable for the report authorized by this section unless it can be proven that a false report was made and the health facility or its employee knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any health facility or employee of a health facility who makes a report known to be false or with reckless disregard of the truth or falsity of the report shall be liable for any damages caused. Any individual knowingly interfering with or obstructing the lawful reporting process shall be guilty of a misdemeanor. "Dangerous weapon," as used in this section, means any weapon the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

(Added by Stats. 1993, c. 936 (AB 508), § 2; Stats. 1993-94, 1st Ex.Sess., c.19 (AB 74), § 1.)

Article 9. Training Programs in Skilled Nursing and Intermediate Care Facilities

1337.1. Adoption; Contents

A skilled nursing or intermediate care facility shall adopt an approved training program that meets standards established by the state department. The approved training program shall consist of at least the following:

(a) An orientation program to be given to newly employed nurse assistants prior to providing direct patient care in skilled nursing or intermediate care facilities.

(b) A precertification training program consisting of at least 50 classroom hours of training on basic nursing skills, patient safety and rights, and the social and psychological problems of patients, and at least 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of nurse training or a licensed nurse. The 50 classroom hours of training may be conducted within a skilled nursing or intermediate care facility or in an educational institution. In such a precertification training program, credit shall be given for the training received in an approved precertification training program adopted by another skilled nursing or intermediate care facility. This subdivision shall not apply to a skilled nursing or intermediate care facility that demonstrates to the state department that it employs only nurse assistants with a valid certification.

(c) Continuing in-service training to assure continuing competency in existing and new nursing skills.

(d) Each facility shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

(Amended by Stats. 1992, c. 1169 (SB 1670), § 1.)

CHAPTER 2.2. HEALTH CARE SERVICE PLANS

*Article 5. Standards***1373. Plan Contract; Coverage Group Contract; Arbitration; Commencement of Benefits**

(a) A plan contract may not provide an exception for other coverage where the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal or medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant's entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal or medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in the section, "sterilization operations or procedures" shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No such plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide in substance that attainment of the limiting age shall not operate to terminate the

coverage of the child while the child is an continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the plan by the member within 31 days of the request for the information by the plan or group plan contractholder and subsequently as may be required by the plan or group plan contractholder, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(e) A plan contract which provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the commissioner.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h)(1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage,

family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, or (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at the time that the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, "marriage, family, and child counselor" means a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or license holder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, "individual practice association" means an entity as defined in subsection (5) of Section 1307[B1] of the federal Public Health Service Act (42. U.S.C. Sec. 300e-1, subsec. (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and which are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract which provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of

confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

(Amended by Stats. 1990, c. 57 (AB 365), § 8, eff. April 20, 1990; Stats. 1993, c. 987 (SB 1221), § 2; Stats. 1994, C. 147 (AB 2377), § 7, eff. July 11, 1994.)

1373.8. Contracts Written or Issued for Delivery Outside State; Selection of California Licensed Clinical Social Worker, Registered Psychiatric-Mental Health Nurse or Marriage, Family and Child Counselor

A health care service plan contract where the plan is licensed to do business in this state and the plan provides coverage which includes California residents but which may be written or issued for delivery outside of California and where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or a marriage, family, and child counselor who is the holder of a license under Section 17805 of the Business and Professions Code, shall not be deemed to prohibit persons covered under the contract from selecting those licensed persons in California to perform the services in California which are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued for delivery.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983-84 Legislative Session that persons covered by the contract and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the plan for services of those providers rendered to those persons.

(Added by Stats. 1983, c. 673, § 1. Amended by Stats. 1984, c. 144, § 152; Stats. 1984, c. 540, § 2.)

1374.55. Coverage for Treatment of Infertility; Applicable Plans; Exceptions

(a) On and after January 1, 1990, every health care service plan contract which is issued, amended, or renewed that covers hospital, medical, or surgical expenses on a group basis, where the plan is not a health maintenance organization as defined in Section 1373.10, shall offer coverage for the treatment of infertility, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group subscriber and the plan. Every plan shall communicate the availability of that coverage to all group contractholders and to all prospective group contractholders with whom they are negotiating.

(b) For purposes of this section, "infertility" means either (1) the presence of a demonstrated condition recognized by a licensed physician and surgeon as a cause of infertility, or (2) the inability to conceive a pregnancy or to carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception. "Treatment for infertility" means procedures consistent with established medical practices in the treatment of infertility by licensed physicians and surgeons including, but not limited to, diagnosis,

diagnostic tests, medication, surgery, and gamete intrafallopian transfer. "In vitro fertilization" means the laboratory medical procedures involving the actual in vitro fertilization process.

(c) On and after January 1, 1990, every health care service plan which is a health maintenance organization, as defined in Section 1373.10, and which issues, renews, or amends a health care service plan contract that provides group coverage for hospital, medical, or surgical expenses shall offer the coverage specified in subdivision (a), according to the terms and conditions that may be agreed upon between the group subscriber and the plan to group contractholders with at least 20 employees to whom the plan is offered. The plan shall communicate the availability of the coverage to those group contractholders and prospective group contractholders with whom the plan is negotiating.

(d) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit to coverage and treatment of infertility under an existing law, plan or policy.

(e) Nothing in this section shall be construed to require any employer that is a religious organization to offer coverage for forms of treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

(f) Nothing in this section shall be construed to require any plan, which is a subsidiary of an entity whose owner or corporate member is a religious organization, to offer coverage for treatment of infertility in a manner inconsistent with that religious organization's religious and ethical principles.

For purposes of this subdivision, "subsidiary" of a specified corporation means a corporation more than 45 percent of the voting power of which is owned directly, or indirectly through one or more subsidiaries, by the specified corporation.

(Amended by Stats. 1990, c. 830 (AB 2474), § 1, eff. Sept. 14, 1990.)

1374.57. Group Health Care Service Plans; Coverage for Dependent Children of Employee or Subscriber not Residing Therewith; Health Care Coverage Standards Compliance

(a) No group health care service plan that provides hospital, medical, or surgical expense benefits for employees or subscribers and their dependents shall exclude a dependent child from eligibility or benefits solely because the dependent child does not reside with the employee or subscriber.

(b) A health care service plan that provides hospital, medical, or surgical expense benefits for employees or subscribers and their dependents shall enroll, upon application by the employer or group administrator, a dependent child of the noncustodial parent when the parent is the employee or subscriber, at any time the noncustodial or custodial parent makes an application for enrollment to the employer or group administrator when a court order for medical support exists. Except as provided in Section 1374.3, the application to the employer or group administrator shall be made within 90 days of the issuance of the court order. In the case of children who are

eligible for medicaid, the State Department of Health Services or the district attorney in whose jurisdiction the child resides may make that application.

(c) This section shall not be construed to require that a health care service plan enroll a dependent who resides outside the plan's geographic service area, except as provided in Section 1374.3.

(d) Notwithstanding any other provision of this section, all health care service plans shall comply with the standards set forth in Section 1374.3.

(Added by Stats. 1991, c. 1152 (AB 2118), § 1. Amended by Stats 1994, c. 147 (AB 2377), § 9, eff. July 11, 1994.)

DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

11027. Prescription; Electronic Transmission Prescription

(a) "Prescription" means an oral order or electronic transmission prescription for a controlled substance given individually for the person(s) for whom prescribed, directly from the prescriber to the furnisher or indirectly by means of a written order of the prescriber.

(b) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" is any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" is any prescription order, other than an electronic image transmission prescription, which is electronically transmitted from a licensed prescriber to a pharmacy.

(Amended by Stats. 1994, c. 26 (AB 1807), § 241, eff. March 30, 1994.)

DIVISION 106. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

PART 2. MATERNAL, CHILD, AND ADOLESCENT HEALTH

CHAPTER 2. MATERNAL HEALTH

Article 2. Abortion

123420. Refusal to Participate in Abortion; Effect; Offense

(a) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if the employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion.

No such employee or person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his or her refusal to participate in an abortion. No such employee of a hospital, facility, or clinic that does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of the person's participation in the performance of an abortion in other than the hospital, facility, or clinic.

No employer shall refuse to employ any person because of the person's refusal for moral, ethical, or religious reasons to participate in an abortion, unless the person would be assigned in the normal course of business of any hospital, facility, or clinic to work in those parts of the hospital, facility, or clinic where abortion patients are cared for. No provision of this article prohibits any hospital, facility, or clinic that permits the performance of abortions from inquiring whether an employee or prospective employee would advance a moral, ethical, or religious basis for refusal to participate in an abortion before hiring or assigning that person to that part of a hospital, facility, or clinic where abortion patients are cared for.

The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subdivision shall not form the basis of any claim for damages.

(b) No medical school or other facility for the education or training of physicians, nurses, or other medical personnel shall refuse admission to a person or penalize the person in any way because of the person's unwillingness to participate in the performance of an abortion for moral, ethical, or religious reasons. No hospital, facility, or clinic shall refuse staff privileges to a physician because of the physician's refusal to participate in the performance of abortion for moral, ethical, or religious reasons.

(c) Nothing in this article shall require a nonprofit hospital or other facility or clinic that is organized or operated by a religious corporation or other religious organization and licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) of Division 2, or any administrative officer, employee, agent, or member of the governing board thereof, to perform or to permit the performance of an abortion in the facility or clinic or to provide abortion services. No such nonprofit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act. The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic that does not permit the performance of abortions on its premises shall post notice of that proscription in an area of the facility or clinic that is open to patients and prospective admittees.

(d) This section shall not apply to medical emergency situations and spontaneous abortions. Any violation of this section is a misdemeanor.

(Added by Stats. 1995, c. 415 (SB 1360), § 8.)

DIVISION 107. STATEWIDE HEALTH PLANNING AND DEVELOPMENT
PART 3. HEALTH PROFESSIONS DEVELOPMENT
CHAPTER 1. HEALTH PROFESSIONS PLANNING
Article 1. Health Personnel Planning

127760. Legislative Findings and Declaration

The Legislature finds and declares that:

(a) Planning for appropriate supplies and distribution of health care personnel is essential to assure the continued health and well-being of the people of the state and also to contain excess costs that may result from unnecessary training and under utilization of health care personnel.

(b) The information on physicians and surgeons collected by the Medical Board of California, in cooperation with the office, and under the authority of Sections 921 and 923 of the Business and Professions Code, has proven to be valuable for health manpower planning purposes. It is the intent of the Legislature, through this article, to provide for the efficient collection and analysis of similar information on other major categories of healing arts licentiates, in order to facilitate the development of the biennial health manpower plan and other reports and program activities of the office.

(c) It is the intent of the Legislature that the data transmitted to the office by the various boards be processed by the boards so that licentiates are not identified by name or license number.

(Added by Stats. 1995, c. 415 (SB 1360), § 9. Amended by Stats. 1996, c. 1023 (SB 1497), § 357, eff. Sept. 29, 1996.)

127765. Data Collection on Healing Arts Licentiates

The office is authorized and directed to receive, with the cooperation of the respective healing arts licensing boards and licentiates, basic data on each licentiate in the following categories of health personnel: registered nurses, licensed vocational nurses, pharmacists, dentists, and optometrists. The office shall develop a suggested format for data collection to be utilized by the various boards. However, the methods utilized to collect and tabulate this information, including the format and content of questionnaires and other survey instruments, shall be determined by each respective healing arts licensing board after consultation with the director of the office.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

127770. Contents of Data Collected on Healing Arts Licentiates

The basic data to be collected on each licentiate in accordance with Section 127765 shall include at least all of the following: principal and other practice locations, practice specialty or specialties for appropriate categories, time spent in direct patient-care/patient-contact and other professional activities, race or ethnicity, age, sex, and educational background.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

127775. Individual Licentiates; Transmission of Information

Notwithstanding Sections 922 and 925 of the Business and Professions Code, the office may receive, and the Medical Board of California may

provide, information respecting individual licentiates collected pursuant to Sections 921 and 923 of the Business and Professions Code.

Information provided to the office pursuant to this section shall be transmitted in a form so that the name or license number of an individual licensee is not identifiable. However, an encoding procedure shall be used to assign a unique identifying number to the other information provided upon the questionnaire so as to allow the office to track the geographical movements of physicians for planning purposes.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

127780. Confidentiality of Information on Individual Licensates

The office shall maintain the confidentiality of the information it receives respecting individual licensates under this article and shall only release information in a form that cannot be used to identify individuals.

(Added by Stats. 1995, c. 415 (SB 1360), § 9. Amended by Stats. 1996, c. 1023 (SB 1497), § 358, eff. Sept. 29, 1996.)

127785. Enrollees In Educational Institutions and Programs Training Health Personnel; Information; Supplemental Data

The California Postsecondary Education Commission shall furnish to the office, at least biennially, all information that the commission has compiled pursuant to Section 66903.2 of the Education Code, that constitutes basic data as to enrollees in public and private educational institutions and programs preparing or training health personnel. The office may request additional data from licensing boards and agencies to supplement the data received from the commission, as necessary to carry out the health personnel planning and development activities of the office.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

127790. Contents of Data on Enrollees in Educational Institutions and Programs Training Health Personnel

The basic data to be provided to the office pursuant to Section 127785 shall include all of the following, by training year or class: numbers enrolled, numbers in the various discipline or specialty categories, and numbers in age, sex, and race or ethnic categories.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

127795. Phased Implementation of Authority Granted by Certain Sections

The office shall implement the authority granted to the office by Sections 127765, 127775, and 127785, on a phased basis, consistent with respective relicensure intervals and with the availability of resources for the effective utilization of the data and information obtained under that authority.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

127800. Regulations; Provision of Information as Condition of Relicensure

The respective licensing boards for registered nurses, licensed vocational nurses, pharmacists, optometrists, and dentists may adopt regulations that require licensates to provide the information included in Section 127770 as a condition of relicensure. In order to facilitate the collection and analysis of

this information, any of these boards may use information from a scientifically selected random sample of the licentiates. These licensing boards may collaborate with the office in the collection or analysis of this information.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

CHAPTER 5. MINORITY HEALTH PROFESSIONS EDUCATION FOUNDATION PROGRAMS

Article 2. California Registered Nurse Education Program

128375. Legislative Findings and Declaration

(a) The Legislature hereby finds and declares that an adequate supply of professional nurses is critical to assuring the health and well-being of the citizens of California.

(b) The Legislature further finds that changes in the health care system of this state have increased the need for more highly skilled nurses. These changes include advances in medical technology and pharmacology, that necessitate the use of more highly skilled nurses in acute care facilities. Further, the containment of health care costs has led to increased reliance on home health care and outpatient services and to a higher proportion of more acutely ill patients in acute care facilities. Long-term care facilities also need more highly educated nursing personnel. Both shifts require a larger number of skilled nursing personnel.

(c) The Legislature further finds and declares that in nursing, as in other professions, certain populations are underrepresented. The Legislature also finds and declares that it is especially important that nursing care be provided in a way that is sensitive to the sociocultural variables that affect a person's health. The Legislature recognizes that the financial burden of obtaining a baccalaureate degree is considerable and that persons from families lacking adequate financial resources may need financial assistance to complete a baccalaureate degree.

(d) The Legislature further finds and declares that approximately 20 percent of all Californians live in rural and urban areas that have been designated health manpower shortage areas. The shortage of professional nurses in these areas makes it more difficult for those citizens to obtain health care and more difficult to attract and retain other health care professionals to those areas.

(e) The Legislature further finds and declares that applications for enrollment in programs that grant baccalaureate of science of nursing degrees have declined at the same time that demand for professional nurses has increased.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

128380. Legislative Intent

It is the intent of the Legislature to accomplish the following:

(a) Assure an adequate supply of appropriately trained professional nurses.

(b) Encourage persons from populations that are currently underrepresented in the nursing profession to enter that profession.

(c) Encourage professional nurses to work in medically underserved areas.
(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

128385. Creation of Program; Persons Eligible; Awards; Recommendations

(a) There is hereby created the Registered Nurse Education Program within the Minority Health Professions Education Foundation. Persons participating in this program shall be either persons from demographically underrepresented groups or persons who agree in writing prior to graduation to serve in an eligible county health facility or a health manpower shortage area, as designated by the director of the office. Persons from demographically underrepresented groups may apply for awards for persons agreeing to serve in eligible county health facilities or health manpower shortage areas. The Registered Nurse Education Program shall be administered in accordance with Article 14 (commencing with Section 69795) of Chapter 2 of Part 42 of the Education Code, except that all funds in the Registered Nurse Education Fund shall be used only for the purpose of promoting the education of registered nurses and related administrative costs, and except that persons who apply for awards that require them to serve in an eligible county health facility or a health manpower shortage area may be, but are not required to be, persons from demographically underrepresented groups or persons from "underrepresented minority groups" as defined in subdivision (g) of Section 69795 of the Education Code. The Minority Health Professions Education Foundation shall make recommendations to the director of the office concerning both the following:

(1) A standard contractual agreement to be signed by the director and any student who has received an award to work in an eligible county health facility or in a health manpower shortage area that would require a period of obligated professional service in the areas of California designated by the Health Manpower Policy Commission as deficient in primary care services. The obligated professional service shall be in direct patient care. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(2) Maximum allowable amounts for scholarships, educational loans, and loan repayment programs in order to assure the most effective use of these funds.

(b) Applicants may be persons licensed as registered nurses or graduates of associate degree nursing programs prior to entering a program granting a baccalaureate of science of nursing. Priority shall be given to applicants who hold associate degrees in nursing.

(c) Not more than 5 percent of the funds available under the Registered Nurse Education Program shall be available for a pilot project designed to test whether it is possible to encourage articulation from associate degree nursing programs to baccalaureate of science of nursing programs. Persons who otherwise meet the standards of subdivision (a) shall be eligible for educational loans when they are enrolled in associate degree nursing

programs. If these persons complete a baccalaureate of science of nursing program in California within five years of obtaining an associate degree in nursing and meet the standards of this article, these loans shall be completely forgiven.

(d) As used in this section, "eligible county health facility" means a county health facility that has been determined by the office to have a nursing vacancy rate greater than noncounty health facilities located in the same health facility planning area.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

128390. Use of Funds

The funds made available pursuant to this article shall be used as specified in Article 14 (commencing with Section 69795) of Chapter 2 of Part 42 of the Education Code, except that the funds shall be used only for the purpose of assisting students in completing nursing programs meeting the standards specified in subdivision (j) of Section 69799 of the Education Code.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

128395. Advice; Solicitation

In developing this program, the Minority Health Professions Education Foundation shall solicit the advice of representatives of the Board of Registered Nurses, the California Nurses Association, the Chancellor of the California Community Colleges, the Chancellor of the California State University, and the California Association of Hospitals and Health Systems.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

128400. Registered Nurse Education Fund; Establishment; Use of Funds

There is hereby established in the State Treasury the Registered Nurse Education Fund. All money in the fund shall be used for the purposes specified in the California Registered Nurse Education Program established pursuant to this article. This fund shall receive money collected pursuant to subdivision (c) of Section 2815 of the Business and Professions Code. These funds shall be appropriated annually in the Budget Act.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

128405. Duration of Article

This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

(Added by Stats. 1995, c. 415 (SB 1360), § 9.)

INSURANCE CODE

DIVISION 2. CLASSES OF INSURANCE

PART 2. LIFE AND DISABILITY INSURANCE

CHAPTER 1. THE CONTRACT

Article 4. *Payment and Proceeds*

10176. Medical Reimbursement Provisions of Disability Policies; Selection of Certificate Holder or Licensee; Unenforceability of Waiver of Mental Health Services Coverage

In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of those services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. No such policy shall prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under the policy for acupuncture.

Nor shall any such policy prohibit the insured, upon referral by a physician and surgeon licensed under Section 2050 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech pathologist or audiologist licensed under Section 2530 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those

psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family and child counselor" means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

(Amended by Stats. 1990, c. 1569 (AB 2459), § 1.)

10176.7. Disability Insurance Written or Issued for Delivery Outside State; Selection of Specified Health Care Providers

Disability insurance where the insurer is licensed to do business in this state and which provides coverage under a contract of insurance which includes California residents but which may be written or issued for delivery outside of California where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or a marriage, family, and child counselor who is the holder of a license under Section 17805 of the Business and Professions Code, or a respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code shall not be deemed to prohibit persons covered under the contract from selecting those licensees in California to perform the services in California which are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued for delivery.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983-84 Legislative Session that persons covered by the insurance and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the insurance for services of those providers rendered to those persons.

(Added by Stats. 1983, c. 673, § 2. Amended by Stats. 1984, c. 540, § 3; Stats. 1989, c. 786, § 2.)

10177. Mental Health Coverage in Self-Insured Employee Welfare Benefit Plan; Unenforceability of Waiver of Lifetime Coverage

A self-insured employee welfare benefit plan may provide for payment of professional mental health expenses upon a reimbursement basis, or for the exclusion of such services, and provision may be made therein for payment of all or a portion of the amount of charge for such services without requiring that the employee first pay such expenses. No such plan shall prohibit the employee from selecting any psychologist who is the holder of a certificate issued under Section 2948 of the Business and Professions Code or, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any marriage, family, and child counselor who is the holder of a certificate or license under Section 4980.50 of the Business and Professions Code, or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, such certificate or license holder being expressly authorized by law to perform such services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family, and child counselor" shall mean a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

A self-insured employee welfare benefit plan, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage in nongroup contracts may not include a lifetime waiver for that coverage with respect to any employee. The lifetime waiver of coverage provision shall be deemed unenforceable.

(Amended by Stats. 1989, c. 1104, § 40.)

10177.8. Self-Insured Employee Welfare Benefit Plans Written or Issued for Delivery Outside State; Selection of Specified Health Care Providers

A self-insured employee welfare benefit plan doing business in this state and which provides coverage which includes California residents but which may be written or issued for delivery outside of California where benefits are provided within the scope of practice of a licensed clinical social worker, a

registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or a marriage, family, and child counselor who is the holder of a license under Section 17805 of the Business and Professions Code, shall not be deemed to prohibit persons covered under the plan from selecting those licensees in California to perform the services in California which are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983-84 Legislative Session that persons covered by the plan and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the plan for services of those providers rendered to those persons.

(Added by Stats. 1983, c. 673, § 3. Amended by Stats. 1984, c. 540, § 4.)

CHAPTER 11a. NONPROFIT HOSPITAL SERVICE PLANS

Article 6. *The Contract*

11512.97. Contracts Written or Issued for Delivery Outside State; Selection of California Licensed Clinical Social Worker, Registered Psychiatric Mental Health Nurse, or Marriage, Family, and Child Counselor

(Formerly § 11512.3, added by Stats. 1983, c. 673, § 4. Amended by Stats. 1984, c. 540, § 5. Renumbered § 11512.97 and amended by Stats. 1985, c. 106, § 100; Repealed by Stats. 1996, c. 484.)

PENAL CODE

PART 1. OF CRIMES AND PUNISHMENT

TITLE 13. OF CRIMES AGAINST PROPERTY

CHAPTER 4. FORGERY AND COUNTERFEITING

471.5. Alteration or Modification of Medical Record or Creation of False Medical Record with Fraudulent Intent

Any person who alters or modifies the medical record of any person, with fraudulent intent, or who, with fraudulent intent, creates any false medical record, is guilty of a misdemeanor.

(Added by Stats. 1974, c. 888, p. 1889, § 10. Amended by Stats. 1979, c. 644, p. 1995, § 2.)

PART 4. PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS

TITLE 1. INVESTIGATION AND CONTROL OF CRIMES AND CRIMINALS

CHAPTER 2. CONTROL OF CRIMES AND CRIMINALS

Article 2. Reports of Injuries

11160. Injuries by Firearm; Assaultive or Abusive Conduct; Reporting Duties by Health Facilities, Clinics, or Physician's Offices, or Local or State Public Health Department; Contents of Report

(a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared and sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive

conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machine-gun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261.

(15) Spousal rape, in violation of Section 262.

(16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

(19) Sodomy, in violation of Section 286.

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation, in violation of Section 288a.

(22) Genital or anal penetration by a foreign object, in violation of Section 289 or 289.5.

(23) Elder abuse, in violation of Section 368.

(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

(Added by Stats. 1993, c. 992 (AB 1652), § 3. Amended by Stats. 1993-94, 1st Ex.Sess., c. 19 (AB 74), § 2.)

11161. Physicians or Surgeons; Reporting Duties

Notwithstanding Section 11160, the following shall apply to every physician or surgeon who has under his or her charge or care any person described in subdivision (a) of Section 11160:

(a) The physician or surgeon shall make a report in accordance with subdivision (b) of Section 11160 to a local law enforcement agency.

(b) It is recommended that any medical records of a person about whom the physician or surgeon is required to report pursuant to subdivision (a) include the following:

(1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.

(2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.

(3) A copy of the law enforcement reporting form.

(c) It is recommended that the physician or surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from domestic violence, as defined in Section 13700.

(Added by Stats. 1993, c. 992 (AB 1652), § 5.)

11161.9. Immunity from Liability

(a) A health practitioner who makes a report in accordance with this article shall not incur civil or criminal liability as a result of any report required or authorized by this article.

(b)(1) No person required or authorized to report pursuant to this article, or designated by a person required or authorized to report pursuant to this article, who takes photographs of a person suspected of being a person described in this article about whom a report is required or authorized shall incur any civil or criminal liability for taking the photographs, causing the photographs to be taken, or disseminating the photographs to local law enforcement with the reports required by this article in accordance with this article. However, this subdivision shall not be deemed to grant immunity from civil or criminal liability with respect to any other use of the photographs.

(2) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds that the suit is frivolous.

(c) A health practitioner who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of abuse shall not incur civil or criminal liability as a result of providing that access.

(d) No employee shall be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.

(e) This section does not apply to mandated reporting of child abuse, as provided for in Article 2.5 (commencing with Section 11164).

(Added by Stats. 1993, c.992 (AB 1652), § 6.)

11162. Violation; Offense; Punishment

A violation of this article is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(Amended by Stats. 1993, c. 992 (AB 1652), § 7.)

11162.5. Definitions

As used in this article, the following definitions shall apply:

(a) "Health practitioner" has the same meaning as provided in Section 11165.8.

(b) "Clinic" is limited to include any clinic specified in Sections 1204 and 1204.3 of the Health and Safety Code.

(c) "Health facility" has the same meaning as provided in Section 1250 of the Health and Safety Code.

(d) "Reasonably suspects" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect.

(Added by Stats. 1993, c. 992 (AB 1652), § 8.)

11162.7. Application of Article

This article shall not apply when a report is required to be made pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164)), and Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

(Added by Stats. 1993, c. 992 (AB 1652), § 9.)

11163. Actions Against Health Practitioners as a Result of Reporting Duties; Payment of Attorney's Fees

(a) The Legislature finds and declares that even though the Legislature has provided for immunity from liability, pursuant to Section 11161.9, for persons required or authorized to report pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws.

In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibility, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions.

(b)(1) Therefore, a health practitioner may present a claim to the State Board of Control for reasonable attorney's fees incurred in any action against that person on the basis of that person reporting in accordance with this article if the court dismisses the action upon a demurrer or motion for summary judgment made by that person or if that person prevails in the action.

(2) The State Board of Control shall allow the claim pursuant to paragraph (1) if the requirements of paragraph (1) are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000).

(3) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(Added by Stats. 1993, c. 992 (AB 1652), § 10.)

11163.2. Disclosure of Reports; Physician-Patient or Psychotherapist Privilege

(a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist privilege applies to the information required to be reported pursuant to this article.

(b) The reports required by this article shall be kept confidential by the health facility, clinic, or physician's office that submitted the report, and by local law enforcement agencies, and shall only be disclosed by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal law implicated by a report. In no case shall the person suspected or accused of inflicting the wound, other injury, or assaultive or abusive conduct upon the injured person or his or her attorney be allowed access to the injured person's whereabouts.

(c) For the purposes of this article, reports of suspected child abuse and information contained therein may be disclosed only to persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(d) The Board of Prison Terms may subpoena reports that are not unfounded and reports that concern only the current incidents upon which parole revocation proceedings are pending against a parolee.

(Added by Stats. 1993, c. 992 (AB 1652), § 11.)

Article 2.5. Child Abuse and Neglect Reporting Act

11165.8. Health Practitioner

As used in this article, "health practitioner" means any of the following:

(a) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(b) A marriage, family and child counselor.

(c) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(d) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(e) A marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(f) An unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code.

(g) A state or county public health employee who treats a minor for venereal disease or any other condition.

(h) A coroner.

(i) A medical examiner, or any other person who performs autopsies.

(Added Stats. 1987, c. 1459, § 15. Amended by Stats. 1988, c. 1580, § 1; Stats. 1996, c. 1081 (AB 3354), § 1.)

11166.5. Mandatory Child Abuse Reporters; Statement of Knowledge of Duty to Report

(a) On and after January 1, 1985, any person who enters into employment as a child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, or with a child protective agency, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provide to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit,

to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall include all of the following provisions:

Section 11166 of the Penal Code requires any child care custodian, health practitioner, firefighter, animal control officer, or humane society officer, employee of a child protective agency, or child visitation monitor who has knowledge of, or observes, a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately, or as soon as practically possible, by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

For purposes of this section, "Child care custodian" includes teachers; an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education; a classified employee of any public school who has been trained in the duties imposed by this article, if the school has so warranted to the State Department of Education; administrative officers, supervisors of child welfare and attendance, or certified pupil personnel employees of any public or private school; administrators of a public or private day camp; administrators and employees of public or private youth centers, youth recreation programs, or youth organizations; administrators and employees of public or private organizations whose duties require direct contact and supervision of children and who have been trained in the duties imposed by this article; licensees, administrators, and employees of licensed community care or child day care facilities; headstart teachers; licensing workers or licensing evaluators; public assistance workers; employees of a child care institution including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; social workers, probation officers, or parole officers; employees of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor; or a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, who is not otherwise described in this section.

"Health practitioner" includes physicians and surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, or any other person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; marriage, family, and child counselors; emergency medical technicians I or II, paramedics, or other persons certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; psycho-

logical assistants registered pursuant to Section 2913 of the Business and Professions Code; marriage, family, and child counselor trainees as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; unlicensed marriage, family, and child counselor interns registered under Section 4980.44 of the Business and Professions Code; state or county public health employees who treat minors for venereal disease or any other condition; coroners; and paramedics.

"Child visitation monitor" means any person as defined in Section 11165.15.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by child protective agencies, public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

(Amended by Stats. 1992, c. 459 (SB 1695), § 4; Stats. 1993, c. 510 (SB 665), § 2; Stats. 1996, c. 1081 (AB 3354), § 4.)

UNEMPLOYMENT INSURANCE CODE

DIVISION 1. UNEMPLOYMENT AND DISABILITY COMPENSATION

PART 2. DISABILITY COMPENSATION

CHAPTER 1. GENERAL PROVISIONS

Article 4. Filing, Determination and Payment of Disability Benefit Claims

2708. First and Continuing Claims; Certificate from Attending Health Care Provider; Treatment Outside State; False Claims by Physician or Practitioner Licensed and Practicing in a Foreign Country; Additional Evidence

(a) In accordance with the director's authorized regulations, and excerpt as provided in Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits be supported by the certificate of a treating physician or practitioner. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. The certificate shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

The certificate shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating his or her conclusion as to the claimant's disability, and a statement of his or her opinion as to the expected duration of the disability.

(b) The first and any continuing claim of an individual who obtains care and treatment outside this state, shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate with the investigation. A physician or practitioner licensed by and practicing in a foreign country who had been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(c) For purposes of this part, the term "physician" has the same meaning as it does in Section 3209.3 of the Labor Code. For purposes of this part, "practitioner" means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a nurse midwife or nurse practitioner.

(d) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(e) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include identification of diagnoses, symptoms or a statement as to the facts of the claimant's disability by the physician or practitioner treating the claimant, by the registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant, or by an examining physician or other representative of the department.

(Added by Stats. 1991, c. 1134 (AB 540) § 8. Amended by Stats. 1993, c. 748 (SB 4), § 10; Stats. 1994, c. 967 (SB 1584), § 7, eff. Sept. 28, 1994.)

WELFARE AND INSTITUTIONS CODE

DIVISION 9. PUBLIC SOCIAL SERVICES

PART 3. AID AND MEDICAL ASSISTANCE

CHAPTER 2. AID TO FAMILIES WITH DEPENDENT CHILDREN

Article 4. *Relatives' Responsibility*

11350.6. Enforcement of Support Order or Judgment; Authority of Board to Withhold Issuance or Renewal of License

Text of section operative until July 1, 1997

(a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) "Certified list" means a list provided by the district attorney to the State Department of Social Services in which the district attorney verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the district attorney, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the district attorney, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The district attorney is authorized to use this section to enforce orders for spousal support only when the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 11475.1 and 11475.2.

(5) "License" includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles, and any commercial fishing license issued by the Department of Fish and Game. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles and any person holding a commercial fishing license issued by the Department of Fish and Game. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term.

(b) The district attorney shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The district attorney shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the district attorney who certified the list to the State Department of Social Services. The district attorney shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The district attorney shall submit to the State Department of Social Services an updated certified list on a monthly basis.

(c) The State Department of Social Services shall consolidate the certified lists received from the district attorneys and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board which is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the State Department of Social Services, all

boards subject to this section shall implement procedures to accept and process the list provided by the State Department of Social Services, in accordance with this section.

(e)(1) Promptly after receiving the certified consolidated list from the State Department of Social Services, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the State Department of Social Services. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the district attorney or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3)(A) The State Department of Social Services may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the State Department of Social Services and subject to approval by the State Department of Social Services. The notice shall include the address and telephone number of the district attorney who submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that district attorney's office as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the district attorney who submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the district attorney who submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The State Department of Social Services shall also develop a form that the applicant shall use to request a review by the district attorney. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g)(1) Each district attorney shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on

the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or district attorney, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the district attorney shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review on the form specified in subdivision (f) to the district attorney who certified the applicant's name. The district attorney shall, within 75 days of receipt of the written request, inform the applicant in writing of his or her findings upon completion of the review. The district attorney shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the district attorney for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the district attorney will be unable to complete the review and send notice of his or her findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the district attorney's notice of his or her findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the district attorney with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the district attorney and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the district attorney to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the district attorney shall not issue a release if the applicant is not in compliance with the judgment or order for support. The district attorney shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

- (1) Judicial review of the district attorney's decision not to issue a release.
- (2) A judicial determination of compliance.
- (3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the district attorney's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the district attorney's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

The request for judicial review shall be served by the applicant upon the district attorney who submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the district attorney shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the

license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(l) The State Department of Social Services shall prescribe release forms for use by district attorneys. When the obligor is in compliance, the district attorney shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support.

If the district attorney determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the district attorney may notify the board, the obligor, and the State Department of Social Services in a format prescribed by the State Department of Social Services that the obligor is not in compliance.

The State Department of Social Services may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until such time a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The State Department of Social Services may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any

fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.

The procedures specified in the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The State Department of Social Services and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the State Department of Social Services and the Franchise Tax Board that will require the State Department of Social Services and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

(Added by Stats. 1992, c. 50 (AB 1394), § 5, eff. May 11, 1992. Amended by Stats. 1994, c. 906 (AB 923), § 3.6, operative Jan. 1, 1996; Stats. 1995, c. 481 (AB 257), § 1; Stats. 1995, c. 938 (SB 523), § 95.5, operative Jan. 1, 1996; Stats. 1996, c. 756 (SB 1442), § 1.)

11350.6. Enforcement of Support Order or Judgment; Authority of Board to Withhold Issuance or Renewal of License

Text of section operative July 1, 1997

(a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) "Certified list" means a list provided by the district attorney to the State Department of Social Services in which the district attorney verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the district attorney, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the district attorney, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The district attorney is authorized to use this section to enforce orders for spousal support only when the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 11475.1 and 11475.2.

(5) "License" includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles, and any commercial fishing license issued by the Department of Fish and Game. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles and any person holding a commercial fishing license issued by the Department of Fish and Game. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term.

(b) The district attorney shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against

whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The district attorney shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the district attorney who certified the list to the State Department of Social Services. The district attorney shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The district attorney shall submit to the State Department of Social Services an updated certified list on a monthly basis.

(c) The State Department of Social Services shall consolidate the certified lists received from the district attorneys and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board which is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the State Department of Social Services, all boards subject to this section shall implement procedures to accept and process the list provided by the State Department of Social Services, in accordance with this section.

(e)(1) Promptly after receiving the certified consolidated list from the State Department of Social Services, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the State Department of Social Services. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the district attorney or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3)(A) The State Department of Social Services may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the State Department of Social Services and subject to approval by the State Department of Social Services. The notice shall include the address and telephone number of the district attorney who submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that district attorney's office as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the district attorney who submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the district

attorney who submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The State Department of Social Services shall also develop a form that the applicant shall use to request a review by the district attorney. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g)(1) Each district attorney shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or district attorney, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the district attorney shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review on the form specified in subdivision (f) to the district attorney who certified the applicant's name. The district attorney shall, within 75 days of receipt of the written request, inform the applicant in writing of his or her findings upon completion of the review. The district attorney shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the district attorney for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the district attorney will be unable to complete the review and send notice of his or her findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review

process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the district attorney's notice of his or her findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the district attorney with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the district attorney and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the district attorney to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the district attorney shall not issue a release if the applicant is not in compliance with the judgment or order for support. The district attorney shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the district attorney's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the district attorney's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the district attorney's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

The request for judicial review shall be served by the applicant upon the district attorney who submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the district attorney shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(l) The State Department of Social Services shall prescribe release forms for use by district attorneys. When the obligor is in compliance, the district attorney shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support.

If the district attorney determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the district attorney may notify the board, the obligor, and the State Department of Social Services in a format prescribed by the State Department of Social Services that the obligor is not in compliance.

The State Department of Social Services may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until such time a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The State Department of Social Services may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it

is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.

The procedures specified in the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only

that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The State Department of Social Services and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the State Department of Social Services and the Franchise Tax Board that will require the State Department of Social Services and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

(Added by Stats. 1992, c. 50 (AB 1394), § 5, eff. May 11, 1992. Amended by Stats. 1994, c. 906 (AB 923), § 3.6, operative Jan. 1, 1996; Stats. 1995, c. 481 (AB 257), § 1; Stats. 1995, c. 938 (SB 523), § 96, operative July 1, 1997; Stats. 1996, c. 756 (SB 1442), § 2, operative July 1, 1997.)

11350.8. Arrearages; Determinations; Review; Enforcement or Distribution; Reimbursement of Review Costs

(a) Upon request of an obligor or obligee, the district attorney shall, within 30 days, review the amount of arrearages alleged in a statement of arrearages that may be submitted to the district attorney by an applicant for child support enforcement services. In the review, the district attorney shall consider all evidence and defenses submitted by either parent on the issues

of the amount of support paid or owed. The district attorney may continue the administrative review as necessary to obtain additional information.

(b) The district attorney may, in his or her discretion, suspend enforcement or distribution of arrearages if he or she believes there is a substantial probability that the result of the administrative review will result in a finding that there are no arrearages.

(c) Any party to an action involving child support enforcement services of the district attorney may request a judicial determination of arrearages. The party may request an administrative review of the alleged arrearages prior to requesting a judicial determination of arrearages. Any motion to determine arrearages filed with the court shall include a monthly breakdown showing amounts ordered and amounts paid, in addition to any other relevant information.

(d) A county that submits a claim for reimbursement as a state-mandated local program of costs incurred with respect to the administrative review of alleged child support arrearages under this section shall be ineligible for state subventions or, to the extent permitted by federal law, state-administered federal subventions, for child support in the amount of any local costs under this section.

(Added by Stats. 1995, c. 481 (AB 257), § 2.)

CHAPTER 7. BASIC HEALTH CARE

Article 3. Administration

14111. Long-Term Health Care Facilities; Delegation to Nurse Practitioners; Supervision; Benefits

(a) As permitted by federal law or regulations, for health care services provided in a long-term health care facility that are reimbursed by Medicare, a physician and surgeon may delegate any of the following to a nurse practitioner:

(1) Alternating visits required by federal law and regulations with a physician and surgeon.

(2) Any duties consistent with federal law and regulations within the scope of practice of nurse practitioners, so long as all of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission of the individual to the facility.

(B) the medical care of each resident is supervised by a physician and surgeon.

(C) A physician and surgeon performs the initial visit and alternate required visits.

(b) this section does not authorize benefits not otherwise authorized by federal law or regulation.

(c) All responsibilities delegated to a nurse practitioner pursuant to this section shall be performed under the supervision of the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.

(d) No task that is required by federal law or regulation to be performed personally by a physician may be delegated to a nurse practitioner.

(e) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ nurse practitioners so long as that employment is consistent with federal law and within the scope of practice of a nurse practitioner.

(Added by Stats. 1992, c. 1048 (AB 2849), § 2. Amended by Stats. 1994, c. 646 (AB 2879), § 11.)

14111.5. Long-Term Health Care Facilities; Nurse Practitioners; Authorized Duties; Benefits

(a) As permitted by federal law or regulations, for health care services provided in long-term health care facility that are reimbursed under this chapter, a nurse practitioner may, to the extent consistent with his or her scope of practice, perform any of the following tasks otherwise required of a physician and surgeon:

(1) With respect to visits required by federal law or regulations, making alternating visit, or more frequent visits if the physician and surgeon is not available.

(2) Any duty or task that is consistent with federal and state law or regulation within the scope of practice of nurse practitioners, so long as all of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission of the individual to the facility.

(B) The medical care of each resident is supervised by a physician and surgeon.

(C) A physician and surgeon performs the initial visit and alternate required visits.

(b) This section does not authorize benefits not otherwise authorized by federal or state law or regulation.

(c) All responsibilities undertaken by a nurse practitioner pursuant to this section shall be performed in collaboration with the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.

(d) Except as provided in subdivisions (a) to (c), inclusive, any task that is required by federal law or regulation to be performed personally by a physician may be delegated to a nurse practitioner who is not an employee of the long-term health care facility.

(e) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ nurse practitioners so long as that employment is consistent with federal law and with the scope of practice of a nurse practitioner.

(Added by Stats. 1992, c.1048 (AB 2849), § 3. Amended by Stats. 1994, c. 646 (AB 2879), § 2; Stats. 1995, c. 91 (SB 975), § 186.)

Article 4. The Medi-Cal Benefits Program

14132.06. Covered Medi-Cal Benefits; Health Services Provided by Certain Local Educational Agencies; Enrollment

(a) Services specified in this section that are provided by a local educational agency are covered Medi-Cal benefits, to the extent federal financial participation is available, and subject to utilization controls and standards adopted by the department, and consistent with Medi-Cal requirements for physician prescription, order, and supervision.

(b) Any provider enrolled on or after January 1, 1993, to provide services pursuant to this section may bill for those services provided on or after January 1, 1993.

(c) Nothing in this section shall be interpreted to expand the current category of professional health care practitioners permitted to directly bill the Medi-Cal program.

(d) Nothing in this section is intended to increase the scope of practice of any health professional providing services under this section or Medi-Cal requirements for physician prescription, order, and supervision.

(e)(1) For purposes of this section, the local educational agency shall, as a condition of enrollment to provide services under this section, be considered the provider of services. A local educational agency provider shall, as a condition of enrollment to provide services under this section, enter into, and maintain, a contract with the department in accordance with guidelines contained in regulations adopted by the director and published in Title 22 of the California Code of Regulations.

(2) Notwithstanding paragraph (1), a local educational agency providing services pursuant to this section shall utilize current safety net and traditional health care providers, when those providers are accessible to specific schoolsites identified by the local educational agency to participate in this program, rather than adding duplicate capacity.

(f) For purposes of this section, covered services may include all of the following local educational agency services:

(1) Health and mental health evaluations and health and mental health education.

(2) Medical transportation.

(3) Nursing services.

(4) Occupational therapy.

(5) Physical therapy.

(6) Physician services.

(7) Psychology and counseling services.

(8) School health aide services.

(9) Speech pathology services and audiology services.

(10) Targeted case management services for children with an individualized education plan (IEP) or an individualized family service plan (IFSP).

(g) Local educational agencies may, but need not, provide any or all of the services specified in subdivision (f).

(h) For purposes of this section, "local educational agency" means the same as defined in subdivision (e) of Section 33509 of the Education Code.

(i) Any local educational agency provider enrolled to provide service pursuant to this section on January 1, 1995, may bill for targeted case management services for children with an individualized education plan (IEP) or an individualized family service plan (IFSP), provided on or after January 1, 1995.

(Added by Stats. 1993, c. 654 (SB 256), § 5. Amended by Stats. 1995, c. 305 (AB 911), § 15, eff. Aug. 3, 1995.)

CHAPTER 11. ABUSE OF THE ELDERLY AND DEPENDENT ADULTS

Article 2. Definitions

15610. Definitions; Construction of Chapter

The definitions contained in this article shall govern the construction of this chapter, unless the context requires otherwise.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.05. Abandonment

"Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.07. Abuse of an Elder or a Dependent Adult

"Abuse of an elder or a dependent adult" means physical abuse, neglect, fiduciary abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.10. Adult Protective Services

"Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action due to ignorance, illiteracy, incompetence, mental limitation, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of entitlement due them.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.13. Adult Protective Services Agency

"Adult protective services agency" means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.15. Bureau

"Bureau" means the Bureau of Medi-Cal Fraud within the office of the Attorney General.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.17. Care Custodian

"Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of the support staff and maintenance staff:

(a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(b) Clinics.

(c) Home health agencies.

(d) Agencies providing publicly funded in-home supportive services.

(e) Adult day health care centers.

(f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.

(g) Independent living centers.

(h) Camps.

(i) Alzheimer's Disease day care resource centers.

(j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(k) Respite care facilities.

(l) Foster homes.

(m) Vocational rehabilitation facilities and work activity centers.

(n) Regional centers for persons with developmental disabilities.

(o) State Department of Social Services and State Department of Health Services licensing division.

(p) County welfare departments.

(q) Offices of patients' rights advocates and clients' rights advocates, including attorneys.

(r) The office of the long-term care ombudsman.

(s) Offices of public conservators, public guardians, and court investigators.

(t) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

(1) The federal Developmental Disability Assistance and Bill of Rights Act, as amended, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section

10801) of the Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illnesses.

(u) Any other protective, public, or private assistance agency or person providing health services or social services to elders or dependent adults.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.20. Clients' Rights Advocate

"Clients rights advocate" means the individual or individuals assigned by a regional center or state hospital developmental center to be responsible for clients' rights assurance for persons with developmental disabilities.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.23. Dependent Adult

(a) "Dependent adult" means any person residing in this state, between the ages of 18 and 64 years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(b) "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.25. Developmentally Disabled Person

"Developmentally disabled person" means a person with a developmental disability specified by or as described in subdivision (a) of Section 4512.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.27. Elder

"Elder" means any person residing in this state, 65 years of age or older.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.30. Fiduciary Abuse

"Fiduciary abuse" means a situation in which any person who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any use or purposes not in the due and lawful execution of his or her trust.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.35. Goods and Services Necessary to Avoid Physical Harm or Mental Suffering

"Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:

- (a) The provision of medical care for physical and mental health needs.
- (b) Assistance in personal hygiene.
- (c) Adequate clothing.
- (d) Adequately heated and ventilated shelter.
- (e) Protection from health and safety hazards.

(f) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.

(g) Transportation and assistance necessary to secure any of the needs set forth in subdivisions (a) to (f), inclusive.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.37. Health Practitioner

"Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, or intern, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family, and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family, and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.40. Investigation

"Investigation" means that activity undertaken to determine the validity of a report of elder or dependent adult abuse.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.43. Isolation

(a) "Isolation" means any of the following:

(1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

(2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

(3) False imprisonment, as defined in Section 236 of the Penal Code.

(4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice

medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.45. Local Law Enforcement Agency

"Local law enforcement agency" means a city police or county sheriffs department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.47. Long-Term Care Facility

"Long-term care facility" means any of the following:

(a) Any long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(b) Any community care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code, whether licensed or unlicensed.

(c) Any swing bed in an acute care facility, or any extended care facility.

(d) Any adult day health care facility as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(e) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.50. Long-Term Care Ombudsman

"Long-term care ombudsman" means the State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging as described in Chapter 9 (commencing with Section 9700) of Division 8.5.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.53. Mental Suffering

"Mental suffering" means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by threats, harassment, or other forms of intimidating behavior.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.55. Multidisciplinary Personnel Team

(a) "Multidisciplinary personnel team" means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly or dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons, as defined in Section 15753.5.

(b) A multidisciplinary personnel team may include, but is not limited to, all of the following:

- (1) Psychiatrists, psychologists, or other trained counseling personnel.
- (2) Police officers or other law enforcement agents.
- (3) Medical personnel with sufficient training to provide health services.
- (4) Social workers with experience or training in prevention of abuse of elderly or dependent persons.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.57. Neglect

"Neglect" means the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

(a) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(b) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(c) Failure to protect from health and safety hazards.

(d) Failure to prevent malnutrition.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.60. Patients' Rights Advocate

"Patients' rights advocate" means a person who has no direct or indirect clinical or administrative responsibility for the patient, and who is responsible for ensuring that laws, regulations, and policies on the rights of the patient are observed.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

15610.63. Physical Abuse

"Physical abuse" means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Spousal rape, as defined in Section 262 of the Penal Code.

(5) Incest, as defined in Section 285 of the Penal Code.

(6) Sodomy, as defined in Section 286 of the Penal Code.

(7) Oral copulation, as defined in Section 288a of the Penal Code.

(8) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

(Added by Stats. 1994, c. 594 (SB 1681), § 3. Amended by Stats. 1996, c. 1075 (SB 1444), § 22.)

15610.65. Reasonable Suspicion

"Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

(Added by Stats. 1994, c. 594 (SB 1681), § 3.)

Article 3. Mandatory and Nonmandatory Reports of Abuse

15630. Mandated Reporters; Known or Suspected Abuse; Telephone Reports; Failure to Report; Penalty

(a) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed an incident that reasonably appears to be physical abuse, observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury clearly indicates that physical abuse has occurred or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as possible, and by written report sent within two working days, as follows:

(1) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsman or the local law enforcement agency.

(2) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

(3) If the abuse has occurred any place other than one described in paragraph (1), the report shall be made to the adult protective services agency or the local law enforcement agency.

(c)(1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are

not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman.

(4) If the suspected or alleged abuse occurred anywhere else, the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter. (g)(1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective

services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(Added by Stats. 1994, c. 594 (SB 1681), § 7. Amended by Stats. 1995, c. 813 (AB 1836), § 1.)

15631. Nonmandated Reporters; Known or Suspected Abuse

(a) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman program or local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility.

(b) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the county adult protective services agency or local law enforcement agency.

(Added by Stats. 1994, c. 594 (SB 1681), § 9.)

15632. Physician-Patient Privilege; Psychotherapist-Patient Privilege

(a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information reported pursuant to this chapter.

(b) Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(Added by Stats. 1994, c. 594 (SB 1681), § 11.)

Article 10. Employee Statement

15659. Signed Statements as Prerequisite to Employment; Care Custodians, Health Practitioners, or Adult Protective Services Agency and Law Enforcement Agency Employees; Professions Required to Report

(a) Any person who enters into employment on or after January 1, 1995, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, that shall be provided by the prospective employer, to the effect

that he or she has knowledge of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1995, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (a).

(c) The cost of printing, distribution, and filing of these statements shall be borne by the employer.

(d) On and after January 1, 1995, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person.

(e) As an alternative to the procedure required by subdivision (d), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1995.

(f) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report physical abuse of elders or dependent adults or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of these persons to comply with the requirements of this chapter.

(Added by Stats. 1994, c. 594 (SB 1681), § 25.)

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UNEMPLOYMENT AND DISABILITY COMPENSATION

DISABILITY COMPENSATION

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Enforcement of Support Order or Judgment; Authority of Board to Withhold Issuance or Renewal of License (11350.6 W&I C)

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